THE

INDIAN PENAL CODE.

In course of preparation,

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No. 1.

THE INDIAN PENAL CODE.

BY

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PREFACE.

THERE are already so many able and elaborate treatises on the Indian Penal Code, that the production of another, and particularly so slight a work as the present, seems to demand a word of apology. My apology is, that, so far as I am aware, none of the more elaborate treatises are designed or adapted for the purpose which this little Manual is intended to fulfil, namely, the purpose of *instruction*. The very qualities most valuable in a work of reference, —copiousness and minuteness of detail—are positive disadvantages to the student who approaches a subject for the first time, and whose chief desiderata are clearness and conciseness.

I have adopted the inelegant form of Question and Answer from a conviction (grounded on many years' experience in the tuition of Selected Candidates for the Indian Civil Service) that by no other method can instruction be imparted so clearly, or committed to memory so readily. In preparing

for Examinations, its superiority is unquestionable, inasmuch as it places the requisite knowledge before the student in the precise shape in which he will be required to use it, and he is thereby enabled, instead of ransacking his memory for stray fragments, to reply with readiness and completeness to any interrogatory. To the young practitioner, desirous of acquiring a broad, useful knowledge of the law he has to administer, and of laying a solid foundation for more thorough mastery of his work, the same form of instruction will be found not less appropriate.

It has been my aim to make the work, though but an outline, a complete outline, and it will be found that no single section has been omitted. Where explanation has appeared to be necessary, it has been added in as few words as possible. The original language of the Code has been preserved so far as practicable, consistently with conciseness, the alterations being mainly restricted to grammatical compression.

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THE INDIAN PENAL CODE.

ACT XLV. OF 1860.

CHAPTER I.

1. *From what date does the Code take effect?*

The 1st day of January, 1862. s.1.

[**Note.**—The date originally inserted was the 1st day of May, 1861, but was altered to the above by Act VI. of 1861.]

2. *What are the local limits of its operation?*

The whole of the territories which are or which may become vested in Her Majesty by stat. 21 & 22 Vict. c. 106 ("An Act for the better government of India"), except the Settlement of Prince of Wales' Island, Singapore, and Malacca. s.1.

[**Note.**—By Act V. of 1867, it is enacted that from and after such day as the Governor of the said Settlement shall appoint in that behalf, the provisions of the Penal Code shall, with the modifications therein mentioned, apply to and take effect throughout the said Settlement, two Rupees in construing the said Code to be deemed equivalent to one Dollar. The "modifications" in question relate simply to the extended definition of an "offence" made universally applicable to the Code by Act IV. of 1867. (See note on Quest. 34).

It is understood that there is considerable opposition in the Settlement to the adoption of the Code, and the Governor has, up to the present time, made no order in respect of it.]

3. *Do the provisions of the Code in any case apply to offences committed beyond such local limits?*

Any person liable, by any law of the Governor-General in Council, to be tried for an act committed beyond the local limits of the Code, is to be dealt with according to the provisions of the Code. s.3.

[**Note.**—It was enacted by Act I. of 1849, as follows:—"All subjects of the British Government, and also all persons in the civil or military service of the said Government, while actually in such service, and for six months afterwards, and also all persons who shall have dwelt for six months within the British territories under the Government of the East India Company, subject to the laws of the said territories, who shall be apprehended within the said territories, or delivered into the custody of a Magistrate within the said territories, wherever apprehended, *shall be amenable to the law for all offences committed by them within the territory of any foreign prince or state:* and may be bailed or committed for trial, as hereafter provided, on the like evidence as would warrant their being held to bail or committed for the same offence, if it had been committed within the British territories."

It will be seen that the above enactment renders such persons as therein described "amenable to the law" for acts committed *outside* the limit of the British territory. The 3rd section of the Code defines the law to which they are to be so amenable; namely, the Penal Code.]

The 4th section extends the provisions of the Code to offences committed by any Servant of the Queen (see s.14) within the dominions of any Prince or State in alliance with the Queen, under any treaty made by the Government of India.

4. *Are any persons or things excepted from the operation of the Code?*

The Code makes no distinction of persons, and every person therefore within the local limits (of whatever nation, rank or creed) is for the time being subject to the provisions of the Code.

The Code, however, expressly disclaims (s.5) any overruling operation in respect of the Charter Act (3 & 4 Will. IV. cap. 85), of any subsequent Act affecting the East India Company or its territories, or of any Mutiny

Act (British or Indian) or Act for the Government of the Indian Navy, or any special or local law.

[**Note.**—The British Army is governed by the Annual Mutiny Act and the Articles of War. By the Articles of War, however, it is expressly provided that Courts Martial in India shall conform in their sentences to the common and statute law of England, as modified by the laws specially applicable to India. The Native Army is now governed by Act V. of 1869, (the "Indian Articles of War.")

As to the meaning of 'special and local' laws, see quest. 35, *post*. It must be remembered that the Penal Code is by no means the only Act which creates offences, or prescribes punishment. Thus, the Marriage Act (Act XXV. of 1864) assigns specific punishments to certain irregularities in the solemnization of marriages in which either of the parties professes to be a Christian. In like manner, by Act III. of 1867, certain gambling offences are made specially punishable. In such cases, the Code will have merely a co-ordinate jurisdiction.]

CHAPTER II.

GENERAL EXPLANATIONS.

5. *What is the special function of the 'General Explanations' inserted in the Code?*

The function of the general explanations is to anticipate questions of construction which might otherwise arise upon the language of the Code. Instead of throwing upon the Judge the duty of interpreting in each case the expressions used, the framers of the Code wisely determined themselves to define, as far as possible, the precise meaning of such words and phrases, as to which any doubt was likely to arise. Where a question of construction was considered likely to arise upon a particular section or part of a section, the explanation is generally appended to such section itself. As, however, there are many words and phrases which frequently recur throughout the Code, the true intention of such words and phrases is collected in a chapter specially devoted to "General Explanations," every such word or phrase being used in the sense there stated, and no other, throughout the Code. s.7.

(For s.6, see Quest. 64).

6. *What is the special function of the 'Illustrations'?*

The Illustrations further tend to remove difficulties of construction, by showing practically the cases to which a

given clause or definition was intended to apply, and the considerations which passed through the mind of the legislator in framing such clause or definition. They furnish a body of ready-made case-law for the guidance of the magistrate, who thus has the advantage, on any given section, of a selection of precedents decided by the Legislature itself.

7. *To what effect are the 'general explanations' with regard to 'gender' and 'number'?*

That the pronoun 'he' and its derivatives are used either of male or female; (s.8) and that (unless the contrary appear from the context) words importing the singular include the plural, and words importing the plural the singular. s.9.

[**Note.**—By s.33, the word 'act' includes a series of acts, and the word 'omission' a series of omissions.]

8. *What do the words 'man' and 'woman' respectively include?*

'Man' a male human being of any age. 'Woman' a female human being of any age. s.10.

9. *What does the word 'person' include?*

Either a single person or a body of persons, whether incorporated or not. s.11.

10. *What does the word 'public' include?*

Any class of the public or any community. s.12.

11. *What does the word 'Queen' denote?*

The Sovereign for the time being of the United Kingdom. s.13.

12. *What do the words 'Servant of the Queen' denote?*

All officers or servants employed in India under the authority of 21 & 22 Vict. 106, (the "Act for the better government of India") or under the authority of the Government of India or any Government. s.14.

13. *What do the words 'British India' denote?*

All Territories vested in Her Majesty under the last-mentioned statute, except Prince of Wales' Island, Singapore and Malacca. s.15.

14. *What do the words 'Government of India' denote?*

Either the Governor-General in Council, or (in his absence) the President of the Council, or the Governor-General alone, as regards the powers which may be lawfully exercised by them or him respectively. s.16.

15. *What does the word 'Government' denote?*

The person or persons authorised by law to administer Executive Government in any part of British India. s.17.

16. *What does the word 'Presidency' denote?*

The Territories subject to the Government of a Presidency. s.18.

17. *What does the word 'Judge' include?*

Every person, or individual of a body of persons, empowered by law to give, in any legal proceeding, civil or criminal, a definitive judgment, whether requiring confirmation by higher authority, or not. s.19.

[**Note.**—Thus a Magistrate exercising jurisdiction in respect of a charge on which he has power only to commit for trial, is *quoàd hoc* not a Judge; though the same Magistrate is a Judge in a case wherein he has summary jurisdiction.]

18. *What do the words 'Court of Justice' denote?*

Any Judge or body of Judges empowered by law to act judicially, when actually engaged in judicial functions. s.20.

19. *What do the words 'Public Servant' denote?*

A person falling under any of the descriptions following, namely:—

1st.—Every covenanted servant of the Queen.

2nd.—Every Commissioned Officer in Her Majesty's service, serving under the Government of India or any Government.

3rd.—Every Judge.

4th.—Every Officer of a Court of Justice, and every person specially authorised by a Court of Justice to perform any of the duties thereof.

5th.—Every Juryman, Assessor, or Member of a Punchayet assisting a Court of Justice or public servant.

6th.—Every Arbitrator or other person to whom any matter has been referred for decision or report by any competent public authority.

7th.—Every person empowered by virtue of his office, to place or keep any person in confinement.

8th.—Every Officer of Government whose duty it is to prevent or give information of offences, to bring offenders to justice, or to protect the public health, safety, or convenience.

9th.—Every Officer whose duty it is to receive, keep, or expend property, or to make any survey, assessment or contract, on behalf of Government; or to execute any revenue process, or to investigate or

report on any matter affecting the pecuniary interests of Government, or to make, authenticate, or keep any document relating to such interests or otherwise to protect such interests; and every Officer in the service or pay of Government or remunerated by fees or commission for the performance of any public duty.

10th.—Every Officer whose duty it is to receive, keep, or expend any property, to make any survey or assessment, or to levy any rate or tax for any secular common purpose of any village, town, or district. s.21.

Explanation.—If a person fall under any of the above descriptions he is (for the purposes of this Code) a public servant, whether appointed by the Government or not. So also if a person is in actual possession of the situation of a public servant, notwithstanding any legal defect in his right to hold such situation.

[**Note.**—By Act XXXI. of 1867, every officer and servant of a Railway Company shall be deemed a public servant within the meaning of ss.161, 162, 163, 164 and 165 of this Code.]

20. *What is included in the words 'moveable property'?*

Corporeal property of every description, except land and things attached to the earth or permanently fastened to anything which is attached to the earth. s.22.

[**Note.**—It should be remarked that the definition is expressly restricted to *corporeal* property, thus excluding all mere rights, or (to use the phrase of English law) *choses in action*.]

21. *What is meant by 'wrongful gain,' 'wrongful loss'?*

'Wrongful gain' is gain by unlawful means of property to which the person gaining it is not legally entitled.

'Wrongful loss' is loss by unlawful means of property to which the person losing it is legally entitled. s.23.

Wrongful gain includes wrongful retention, and wrongful loss the being wrongfully kept out of property. *Ibid.*

22. *When is a man said to do a thing 'dishonestly'?*

When he does such thing with the intention of causing *wrongful gain* or *wrongful loss* to any person. s.24.

23. *When is a man said to do a thing 'fraudulently'?*

When he does such thing *with intent to defraud,* but not otherwise. s.25.

24. *When is a person said to have 'reason to believe' a thing?*

When he has *sufficient cause* to believe such thing, but not otherwise. s.26.

25. *When is property said to be 'in the possession' of a given person?*

When it is in possession either of such person himself, or of his wife, clerk, or servant, on his account. s.27.

The expression 'clerk or servant' includes a person temporarily employed. *Ibid.*

[**Note.**—The meaning of possession is important in relation to the definition of Theft. s.378.]

26. *When is a person said to 'counterfeit'?*

When he causes one thing to resemble another thing, intending by means of that resemblance to practice deception. s.28.

Explanation.—It is not essential to counterfeiting that the imitation should be exact. *Ibid.*

27. *What does the word 'document' denote?*

Any substance on which is expressed or described (by means of letters, figures or marks) any matter, and which is intended to be, or may be used, (in a Court of Justice or otherwise) as evidence of such matter. s.29.

Illustrations.—A memorandum of the terms of a contract. A cheque upon a banker. A power of attorney. A map or plan. A writing containing directions or instructions.

[**Note.**—The words of the Code are "The word 'document' denotes any matter expressed or described upon any substance by means of letters, figures, or marks, or by more than one of those means, intended to be used, or which may be used, as evidence of that matter."

This definition is manifestly faulty. The 'matter described' is clearly not the 'document.']

Explanation.—Any letters, figures, or marks, which by mercantile or other usage have a special signification, are to be interpreted accordingly. (Thus A writes his name on the back of a Bill of Exchange payable to his order. The meaning of the endorsement, as explained by mercantile usage, is that the Bill is to be paid to the holder, and such endorsement will be construed accordingly.)

28. *What do the words 'valuable security' denote?*

Any document which is, or purports to be, a document whereby any legal right is created, extended, transferred, restricted, extinguished or released, or whereby any person acknowledges that he lies under legal liability, or has not a certain legal right. s.30.

[**Note.**—This definition is very wide in its terms, embracing not only instruments representing a distinct money value, as bonds, bills of exchange, mortgages, and the like, but marriage settlements, contracts, wills, &c. A forged cheque or conveyance, though really worthless, will, as "purporting to be," &c., be within the definition as a valuable security.

The Illustration given in the Code is as follows: "A writes his name on the back of a Bill of Exchange. As the effect of this endorsement is to transfer the right to the money secured by the Bill to any person who may become the lawful holder of it, the endorsement is a 'valuable security.']

29. *What do the words 'a Will' denote?*

'Any testamentary document:'—(thereby including a Codicil, or an irregularly executed Will). s.31.

30. *How are illegal omissions dealt with by the Code?*

Throughout the Code, unless a contrary intention appear from the context, words which refer to acts done extend also to illegal omissions. s.32.

[**Note.**—In many of the sections of the Code as originally drawn, the consequences of an act are expressly extended to an illegal omission. Thus the definition of culpable homicide, as at first framed, begins as follows:—"Whoever does any act *or omits what he is legally bound to do*, with the intention of," &c. The words denoting omission are generally omitted throughout the present Code, their intent being sufficiently covered by the above section.]

An offence may be committed partly by an act, and partly by an illegal omission. s.36.

The word 'act' includes a series of acts, the word 'omission' a series of omissions. s.33.

[As to the meaning of 'illegal,' see s.43, Quest. 36.]

31. *When several persons unite in a criminal act, to what extent are they severally responsible?*

Each of such persons is liable for the act in the same manner as if such act were done by him alone. (s.34.) When the act in question is only criminal *in so far as it is done with a criminal knowledge or intention*, each is liable only to the extent of his own knowledge or intention. (s.35.) Apart from criminal knowledge or intent, several persons engaged in the commission of a criminal act may, from difference of circumstances, be guilty of different offences by means of that act. s.38.

Illustration.—A kills Z under circumstances of such grave provocation as to reduce his offence to culpable homicide not amounting to murder. If B, not having been subject to the same provocation, aids A in killing Z, B will be guilty of murder.

32. *When an offence is committed by means of several acts, what is the liability of a person co-operating in the commission of such offence by doing one only of such acts?*

Every person intentionally co-operating is deemed to have committed the offence. s.37.

[**Note.**—Co-operation is necessary to create liability for the complete offence. Thus, if A and B, gaolers, having alternate charge of Z, a prisoner, agree to withhold his food, and thereby cause his death, both have committed murder. But if A, intending to starve Z, withholds his food, but is removed from his office before death is caused; and then B, his successor, *without concert with A*, intentionally continues to starve Z, and thereby causes his death, B has committed murder, but A only an attempt to murder.]

(For s.38, see Quest. 31.)

33. *When is a person said to cause an effect 'voluntarily'?*

When he causes it either by means whereby he intended to cause it, or by means which he knew or had reason to believe to be likely to cause it. s. 39.

[**Note.**—Intention is often a matter very difficult of proof. If the effect is the *natural or probable consequence* of the act, the Code declares that the doer has caused the effect 'voluntarily,' whether he actually *intended* to produce that precise effect, or not. The illustration given is that of a man who sets fire by night to an inhabited house for the purpose of facilitating a robbery. Here the offender knows that his act is "likely to cause" death or serious injury. If such death or injury be caused, he is liable as if he had intended to produce that precise effect. In like manner, if a man fire a loaded gun, without taking aim, into a crowd of people:—he may not intend the death of any given person, but if death result, it would be absurd to say that he has not caused such death voluntarily.

The words 'reason to believe' will be construed by the light of s.26, (quest. 24).

Throughout the Code, where a particular intent forms part of the definition of an offence, the knowledge that a particular result is *likely* to follow the act is generally made equivalent to the intention to cause such result.]

34. *What does the word 'offence' denote?*

Anything made punishable by this Code. s.40.

[**Note.**—This is the original limit of the definition, but by Act IV. of 1867, after reciting that it is expedient to enlarge the definition of the word 'offence,' so as to make it denote not only anything made punishable by this Code, but also anything made punishable by any 'special' or 'local' law therein defined, it is enacted that ss. 187, 194, 195, 203, 211, 213, 214, 221, 222, 223, 224, 225, 327, 328, 329, 330, 331, 347, 348, 388, 389 and 445 shall be construed as if the word 'offence' therein used denoted as above. And that ss. 141, 176, 177, 201, 202, 212, 216 and 441 shall be construed in the same way, when the thing made punishable by a special or local law is punishable by such law with imprisonment for six months or upwards with or without fine.]

35. *What is the meaning of* (1) *a 'special law,'* (2) *a 'local law'?*

A 'special law' is a law applicable to a particular subject. s.41.

A 'local law' is a law applicable only to a particular part of British India. s.42.

Illustrations.—Act XXV. of 1864, providing for the solemnization of marriage between persons of the Christian religion is a 'special law.'

Act IV. of the same year "to give validity to certain proceedings of the Court of Small Causes at Kurrachee" is a 'local law.'

36. *What is the meaning of the word 'illegal'?*

The word 'illegal' is applicable to everything which is an *offence*, or which is *prohibited by law*, or which *furnishes ground for a civil action*: and a person is said to be 'legally bound to do' whatever it is illegal in him to omit. s.43.

[**Note.**—'Illegal' is therefore a word of much wider meaning than 'offence.' Every offence is illegal, but not everything that is illegal is an offence. That only is an *offence* which renders the doer criminally responsible, but anything is *illegal* (whether act or omission) which renders him liable either to a criminal prosecution, or a civil action.]

37. *What does the word 'injury' denote?*

Any harm whatever *illegally* caused to any person in body, mind, reputation, or property. s.44.

[**Note.**—Not every harm caused to a person is, in a legal sense, an 'injury.' To constitute an injury, such harm must be *illegally* done (*injustè factum*), otherwise it is only *damnum absque injuriâ* (hurt without wrong-doing), and is without legal remedy.]

38. *What do the words 'life' and 'death' denote?*

The 'life' or 'death' of a human being, unless the contrary appears from the context. ss.45, 46.

39. *What does the word 'animal' denote?*

Any living creature other than a human being. s.47.

40. *What does the word 'vessel' denote?*

Anything made for the conveyance by water of human beings, or of property. s.48.

41. *In what sense are the words 'year' and 'month' used?*

To signify a year or month according to the British calendar. s.49.

42. *What does the word 'section' denote?*

One of those portions of a chapter of the Code which are distinguished by prefixed numeral figures. s.50.

43. *What is included under the word 'oath'?*

Not only an oath strictly so called, but also any solemn affirmation substituted by law for an oath, and any declaration required or authorised by law to be made before a public servant, or to be used for the purpose of proof, whether in a Court of Justice or not. s.51.

44. *When is a thing said to be done or believed 'in good faith'?*

Only when it is done or believed with due care and attention. s.52.

[**Note.**—The phrase 'in good faith' occurs repeatedly in the Code, being one element of justification in many of those special cases which by the 'general exceptions,' are taken out of the category of offences. It becomes therefore necessary to lay down some broad rule as to what good faith is. It is here restricted to cases where due care and attention have been used, on the same principle as (by s.26) a man is said to have 'reason to believe' only what he has *sufficient* reason to believe. Whether due care and attention have been exercised, will be a question of fact on the circumstances of each particular case.]

CHAPTER III.

OF PUNISHMENTS.

45. *What are the different kinds of punishment to which offenders are liable under this Code?*

1. Death.
2. Transportation.
3. Penal servitude.
4. Imprisonment, which may be either 'simple,' or 'rigorous,' *i. e.*, with hard labour.
5. Forfeiture of property.
6. Fine.

[**Note.**—Besides the above, which are the only punishments specified in the Code itself, 'whipping' is, by Act VI. of 1864, made applicable in a number of cases, either as an alternative or an additional punishment. It may be awarded (by s.2) as an alternative punishment, upon a first conviction of either of the offences following :—

1. Theft, either simple (s.378), or with the aggravations described in ss. 380, 381 and 382 of this Code.
2. Extortion by threat of accusation of an unnatural offence, &c. s.388.
3. Putting a person in fear of such accusation. s.389.
4. Dishonestly receiving stolen property. ss.411, 412.
5. Lurking house-trespass, or house-breaking, (ss. 443, 444, 445, 446,) in order to the committing of any offence above made punishable with whipping.

By s. 3.—Any one who, having been previously convicted of either of the above offences, is again convicted of the same offence, may be punished with whipping, either in lieu of or in addition to any other punishment to which he may be liable under the Penal Code.

By s. 4.—Whipping may be inflicted as an *additional* punishment on

a second conviction of any one of the following offences. (N.B.—The offence must be the *same* in both cases), viz. :—

1. Giving or fabricating false evidence in manner punishable under s.193 of the Penal Code.
2. The like with intent to procure conviction of a capital offence. s.194.
3. The like with intent to procure conviction of an offence punishable with transportation or imprisonment. s.195.
4. Falsely charging any person with the commission of an unnatural offence. ss.211 & 377.
5. Assaulting or using criminal force to any woman with intent to outrage her modesty. s.354.
6. Rape. s.375.
7. Unnatural offences. s.377.
8. Robbery or dacoity. ss.390, 391.
9. Attempting to commit robbery. s.393.
10. Voluntarily causing hurt in committing robbery. s.394.
11. Habitually receiving or dealing in stolen property. s.413.
12. Forgery. s.463.
13 & 14. Forgery of a document. ss.466, 467.
15. Forgery for the purpose of cheating. s.468.
16. Forgery for the purpose of harming reputation of any person. s.469.
17. Lurking house-trespass, or house-breaking (ss.443, 445), in order to the committing of any offence punishable with whipping under this section.
18. The like by night (ss.444, 446), with the above intent.

By s.5. Any juvenile offender who commits any offence not punishable with death, may, whether for a first or any other offence, be punished with whipping, in lieu of any other punishment to which he may be liable.

By s.7. No female is to be punished with whipping; neither shall any person who shall be sentenced to death, transportation, or penal servitude, or to imprisonment for more than 5 years.

By s. 10. The whipping shall be inflicted with such instrument and in such mode as the Local Government shall direct. In the case of juvenile offenders, with a light rattan. Punishment with the cat-of-nine tails not to exceed 150 lashes; with rattan, 20 stripes.]

46. *What are the offences for which the punishment of death* must *be awarded?*

One only; viz., murder by a person under sentence of transportation for life (s.303). In all other cases, for which death may be awarded, transportation for life may be awarded instead.

47. *What are the offences for which death* may *be awarded?*

Waging war against the Queen (s.121); abetting mutiny actually committed (s.132); giving or fabricating false evidence, upon which an innocent person suffers death (s.194); murder (s.302); abetment of suicide of a minor, or insane or intoxicated person (s.305); and dacoity accompanied with murder (in which each dacoit is liable for the acts of the whole gang. s.396).

48. *What are the offences for which transportation for life* must *be awarded?*

Unlawful return from transportation (s.226), and being a Thug. s. 311.

49. *What are the* maximum *and* minimum *terms of imprisonment?*

The maximum is fourteen years. The minimum is unlimited, save in the cases of robbery or dacoity, with attempt to cause death or grievous hurt (s.397), and of attempt to commit robbery or dacoity when armed with a deadly weapon (s. 398). In either of these cases, the offender is punishable with imprisonment for *not less* than seven years. The lowest term actually named as a maximum for a given offence, is twenty-four hours, (for misconduct while in a state of intoxication. s.510).

50. *In what cases does forfeiture of property form part of the punishment?*

The punishment of forfeiture is of three kinds or degrees; viz.—

1. Absolute forfeiture of all property of the offender.

2. Forfeiture of rents and profits (during the term of transportation or imprisonment).

3. Forfeiture of specific property.

1. Absolute forfeiture is an *inseparable portion* of the punishment for waging, or attempting to wage war, or abetting the waging of war against the Queen (s.121), and for collecting men, arms, or ammunition for, or otherwise preparing to wage, such war (s.122). Absolute forfeiture may also, at the discretion of the Judge, be adjudged in the case of any person "convicted of an offence punishable with death." s.62.

2. By the same section as last before cited (s.62), "whenever any person shall be convicted of any offence for which he shall be transported or sentenced to imprisonment for a term of seven years or upwards, the Court may adjudge that the rents and profits of all his moveable and immoveable estate during the period of his transportation or imprisonment, shall be forfeited to the Government, subject to such provision for his family and dependents as the Government may think fit to allow during such period."

[**Note.**—There is a noteworthy distinction between the wording of the two clauses of this section (s.62), as to the cases in which the Court has power to inflict the additional punishment. By the first clause, the Courts may inflict absolute forfeiture in the case of any offence "punishable with death," whether death be the actual sentence or not; but the second clause only applies where the offender not only may, but *shall* "be transported or sentenced to imprisonment for a term of seven years or upwards." The distinction is doubtless intentional. None but offences of the very gravest character are punishable with death, but the classes of offences punishable with "imprisonment for a term which *may* extend to seven years," are very large and numerous, and embrace many cases where a comparatively trifling punishment will, in the particular instance, meet the justice of the case. In such cases, it would be clearly undesirable to empower the Judge to inflict a heavy additional penalty.]

3. There are three cases in which the forfeiture of specific property forms part of the punishment. Under s.126, whoever commits, or prepares to commit, depreda-

tion on the territories of any power at peace with the Queen, shall be liable, in addition to other punishments, to forfeiture of any property used, or intended to be used in such depredation, or acquired thereby. By s.127, whoever knowingly receives property taken as last mentioned, or in waging war against any Asiatic power at peace with the Queen shall forfeit such property. Lastly, under s.169, if a public servant improperly purchases property, which by virtue of his office he is legally prohibited from purchasing, he forfeits such property.

By s.61, any person convicted of an offence for which he is liable to forfeiture of all his property *(semble,* whether actually sentenced to forfeiture or not), is incapable, until he shall either have undergone his punishment, or have been pardoned, of acquiring any property, save for the benefit of Government.

51. *In what cases is fine the* only *punishment ?*

There are seven sections under which fine is the only punishment which can be awarded. By s.155, the person for whose benefit a riot has been committed, not having duly endeavoured to prevent it; and by s. 156, the agent or manager of such person under the like circumstances, is punishable with fine, no limit of amount being specified.

By s.154, the owner or occupier of land on which a riot or unlawful assembly is held, and any person having or claiming any interest in such land, and not using all lawful means to prevent such riot, or unlawful assembly, is punishable with fine not exceeding Rs. 1000.

By s.137, a person in charge of a merchant vessel negligently allowing a deserter from the Army or Navy to obtain concealment in such vessel, is liable to a fine not exceeding Rs. 500; and by s. 278, voluntarily vitiating

the atmosphere so as to render it noxious to the public health, is punishable in like manner.

By s.283, the obstructing a public way or line of navigation, and by s.290, the committing of a public nuisance not otherwise punishable, are punishable with fine not exceeding Rs. 200.

The cases in which fine may be awarded as an additional or alternative punishment are very numerous. Where fine is awarded as an *additional* punishment, its amount is generally left to the discretion of the Judge. Where it is an *alternative* punishment, the amount is sometimes limited, sometimes unlimited.

52. *In whom is vested the power of commutation of punishment, and what are the limits of such power?*

The Government of India, or the Local Government, may in every case, commute *sentence of death* for any other punishment provided by this Code, and sentence of transportation for life for imprisonment (simple or rigorous) for a term not exceeding fourteen years. The consent of the offender is in neither case necessary. ss.54, 55.

[**Note.**—It will be remarked, that the power here given is limited to cases in which the sentence of *death* or of *transportation for life* has been passed. But by s. 54 of the Code of Criminal Procedure (Act XXV. of 1861), "When any person has been sentenced to punishment for an offence, the Governor-General of India in Council or the Local Government may, at any time, without conditions, or upon any conditions which such person shall accept, remit the whole or any part of the punishment to which he shall have been sentenced."]

53. *If a European or American be convicted of an offence punishable under this Code with transportation, how is he to be dealt with?*

He is to be sentenced to penal servitude, instead of transportation, according to the provisions of Act XXIV. of 1855. s.56.

54. *To what term of transportation is transportation for life equivalent?*

Twenty years. s.57.

[**Note.**—Under s. 511, an attempt to commit an offence punishable with transportation or imprisonment, is (in default of express provision) to be punished (*inter alia*) with transportation or imprisonment which may extend to one-half of the longest term provided for the actual offence.

Hence, if the offence be punishable with transportation for life, the *attempt* may be punished with transportation for ten years.]

55. *How is an offender sentenced to transportation to be dealt with until transportation?*

As if sentenced to rigorous imprisonment, the time during which he is imprisoned counting as part of his term of transportation. s.58.

56. *In what cases may transportation be awarded instead of imprisonment?*

In every case in which the offender is punishable with imprisonment *for seven years or upwards,* the Court may sentence to transportation instead, for a term not exceeding the maximum term of imprisonment for the offence. s.59.

57. *How is it decided whether a given term of imprisonment is to be rigorous or simple?*

The description of imprisonment is for some particular offences defined by the Code itself. Where, as is more generally the case, the imprisonment may be "of either description," the Court is to decide in passing sentence, whether such imprisonment is to be wholly rigorous or wholly simple, or partly rigorous and partly simple. s.60.

[**Note.**—Throughout this Manual, in stating the punishments appropriate to different offences, imprisonment is in every case to be understood as "of either description," unless otherwise expressly stated.]

(For ss.61, 62, see Quest. 50.)

58. *Where the amount of a fine is left indefinite by the Code, what are its maximum and minimum limits?*

The sole limit is that the fine "shall not be excessive." s.63.

[**Note.**—The Code herein follows the language of the Bill of Rights, and of the Constitution of the United States. The framers of each alike felt that, be the minimum ever so low, it would still be oppressive to the very poor, and be the maximum ever so high, there would be some few so rich as to be little deterred by it. They therefore left the amount to be decided by the Judge, upon the circumstances of the particular case.]

59. *What are the provisions of the Code with regard to imprisonment in default of payment of fine?*

In every case where an offender is sentenced to fine, the Court may direct that the offender shall in default of payment suffer a term of imprisonment in addition to any other imprisonment to which he may have been sentenced for the offence. (s.64). Such extra imprisonment may be of any description (*i.e.*, rigorous or simple) to which the offender might have been sentenced for the offence, (s. 66) and shall not exceed in duration one-fourth of the maximum term assigned to the offence itself (s.65). If such offence be punishable with fine only, such imprisonment in default shall not exceed two months for a fine not exceeding Rs. 50, four months for a fine not exceeding Rs. 100, or six months in any other case. s.67.

The offender is not, however, permitted to choose whether he will suffer in his person or in his property. The Court which passes the sentence may (by s.61 of the Code of Criminal Procedure,) issue a warrant for the levy of the fine by distress and sale of any *moveable* property of the offender. This may be done (Penal Code, s.70) at any time within six years after the passing of the sentence, or

previous to the expiration of the sentence, and the death of the offender leaves his estate still liable to such levy (*ibid:*). When the fine is either paid or levied by process of law, the imprisonment in default will terminate (s.68). If the offender has already undergone a portion of the imprisonment in default, and "such a proportion of the fine be paid or levied that the term of imprisonment suffered in default of payment is not less than proportional to the part of the fine still unpaid," the imprisonment shall terminate (s.69). Thus, if the fine be Rs. 100 and the term of imprisonment in default four months:—if the offender, after having undergone one month's imprisonment, pays Rs. 75, his imprisonment will terminate. It must be remembered, however, that the amount not actually paid, or the whole amount in case he has paid nothing, (though he may have suffered his full term of imprisonment in default) still remains (within the limit of time stated in s.70) leviable upon his moveable property.

60. *When an offence is made up of parts, any of which parts is itself an offence, how is the offender dealt with?*

In default of express provision, the offender is not to be punished with the punishment of more than one of such offences. s.71.

Illustration.—A gives Z fifty strokes with a stick. He has committed the offence of "voluntarily causing hurt," and under sec. 323 is thereby liable to imprisonment for a year, or Rs. 1000 fine. By each blow, singly, he has technically committed the same offence, and is liable to the same punishments, but by this section, he is to be punishable only for the sum total of his acts. If while A is beating Z, Y interferes, and A strikes him also, this is a separate offence, and will be separately punishable.

61. *Where a person is found guilty in the alternative of one of several offences, for which is he to be punished?*

For that one of such offences for which the lowest punishment is provided. s.72.

Illustration.—An accused is found guilty of either theft or criminal misappropriation. He will be punished as for criminal misappropriation, that being the lighter of the two offences.

62. *Under what circumstances, and subject to what regulations, is* solitary confinement *inflicted as a punishment?*

Whenever a person is convicted of an offence *for which the Court has power to sentence him to rigorous imprisonment,* the sentence may direct that the offender be kept in solitary confinement for any portions, not exceeding in the whole three months, of his term of imprisonment, according to the following scale:—

Solitary confinement not to exceed:—*one month* if whole term of imprisonment shall not exceed six months.

—*Two months* if whole term be more than six months and less than a year.

—*Three months* if whole term exceed one year. s.73.

In executing a sentence of solitary confinement, such confinement shall in no case exceed fourteen days at a time. If the whole term of imprisonment awarded shall exceed three months, the solitary confinement shall not exceed seven days in any one month of such term; *and in any case there shall be intervals between the periods of solitary confinement of not less duration than such periods.* s.74.

63. *What is the effect of a* previous conviction *in increasing the punishment of an offence?*

Whoever having been convicted of an offence punishable under Chap. XII. or Chap. XVII. of the Code with imprison-

ment of either description for a term of three years or upwards, shall be guilty of any offence punishable under either of these Chapters with imprisonment of either description for a term of three years or upwards, shall be subject for every such subsequent offence to transportation for life or double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for a term exceeding ten years. s.75.

[**Note.**—Chap. XII. deals with "offences relating to coin and government stamps." Chap. XVII. with "offences against property." Both convictions need not be for the same offence or indeed under the same Chapter. It is worthy of remark that in no other case, save in relation to the special classes of offences specified in the above section, has a previous conviction, according to this Code, any effect on the sentence. But by the Whipping Act, (Act VI. of 1864) whipping may be awarded as an additional punishment on a second conviction of any of a large number of offences there specified, but in this case, both convictions must be for the *same offence*.—See Note on Quest. 45.]

CHAPTER IV.

GENERAL EXCEPTIONS.

64. *What is the nature and purpose of the 'General Exceptions'?*

The design of the Chapter of 'General Exceptions' is to avoid the repetition throughout the Code of a number of necessary limitations. Where a given exception relates only to a particular section or group of sections it will be found generally appended to such section or group; but such Exceptions as are common to the whole or to a large portion of the clauses, are collected in a special Chapter (Chap. IV.), and it is once for all provided (s. 6) that every definition of an offence, every penal provision, and every illustration of such definition or penal prohibition, shall be understood subject to such 'general exceptions.'

[**Note.**—It should be remembered, in connection with this subject, that the onus of showing that a given case comes within one of the 'General Exceptions' lies on the accused; but on the other hand, where there is a *special* exception appended to the section under which the prisoner is accused, the onus is upon the prosecutor to show that the case does not come within such special exception, and the charge must be framed accordingly, (Code of Criminal Procedure, ss.235, 236, 237). The sections in question are as follows.—

"235.—It shall not be necessary to allege in the charge any circumstances for the purpose of showing that the case does not come, nor shall it be necessary to allege that the case does not come, within any of the General Exceptions contained in Chap. IV. of the Indian Penal Code, but every charge shall be understood to assume the absence of all such circumstances.

"236.—It shall not be necessary at the trial, on the part of the prose-

cutor, to prove the absence of such circumstances in the first instance, but the accused person shall be entitled to give evidence of the existence of any such circumstances, and evidence in disproof thereof may then be given on the part of the prosecutor.

"237.—When the Section referred to in the charge contains an exception not being one of such General Exceptions, the charge shall not be understood to assume the absence of circumstances constituting such exception so contained in the section, without a distinct denial of the existence of such circumstances."

e.g., in a charge under sec. 312 of voluntarily causing miscarriage, it must be distinctly alleged that such miscarriage was not caused in good faith for the purpose of saving the life of the woman.]

65. *Under what circumstances is the* belief of legal justification *a good defence?*

Nothing is an offence which is done by any person who is justified by law, or who *by reason of a mistake of fact and not by reason of a mistake of law* in good faith believes himself to be justified by law in doing it." s.79.

[**Note.**—The Code here follows the rule of English Law:—"*Ignorantia legis neminem excusat.*" Every one is presumed to know the law, and cannot therefore plead mistake concerning it, but a bonâ fide mistake of *fact* is good matter of defence. Thus, if A sees Z apparently in the act of murdering B, and thereupon causes grievous hurt to Z, in attempting to cause him to desist:—here it may prove that A was in truth only acting in self-defence, yet A has committed no offence, as by reason of a mistake of fact he conceived himself justified in inflicting such hurt on Z.]

A fortiori, if A, by reason of such a mistake as aforesaid, conceive himself not only justified, but absolutely *bound by law* to do the act in question, he has committed no offence. s.76.

In the case of a Judge, *when acting judicially,* the immunity is wider. "Nothing is an offence, which is done by a Judge when acting judicially in the exercise of any power which is, or which in good faith he believes to be, given to him by law." s.77.

[**Note.**—In the case of a Judge, who has constantly to decide upon doubtful and difficult questions of law, a bonâ fide belief of justification is (on grounds of public policy) made sufficient, even though founded on a mistake *of law.* As to the meaning of the words a "Judge when acting judicially," see s.19, Quest. 17.]

In like manner, nothing done in pursuance of, or warranted by the judgment or order of a Court of Justice, is an offence, notwithstanding the Court may have had no jurisdiction to pass such judgment or order, provided the person doing the act in good faith believed that the Court had such jurisdiction. s.78.

66. *Under what circumstances is* accident *or* misfortune *a good defence?*

When the act in the doing of which such accident or misfortune happens is (1) a lawful act (2) done in a lawful manner (3) by lawful means (4) with proper caution (5) without criminal knowledge or intention. s.80.

67. *Under what circumstances is it lawful to do an act with the knowledge that it is likely to cause harm?*

When such act is done without any criminal intention to cause harm, and in good faith for the purpose of preventing or avoiding other harm to person or property. Whether the harm to be avoided was so serious or so imminent as to amount to a justification, is a question of fact. s.81.

Illustration.—A, the captain of a steam vessel, suddenly finds himself, without fault of his own, in such a position that unless he changes his course, he must run down a boat B containing twenty passengers, and that by changing his course, he must run great risk of running down a boat C with two passengers only. He changes his course, and runs down C. He has a good defence under this section. Similarly, a person who, in a conflagration, pulls down houses to prevent the fire from spreading.

[**Note.**—It should be remarked that this section rests solely upon the supposed necessity of the case, apart from the consent of the person who may be injured by the act in question. There is an extensive class of cases, of a somewhat similar character, where consent is a material element. For the law in such cases, see Question 71.]

68. *Under what circumstances is* want of age *a valid defence?*

Nothing is an offence which is done by a child under seven years of age (s. 82). Above seven and under twelve, if the child has attained "sufficient maturity of understanding to judge of the nature and consequences of the act," it may be an offence, if otherwise, not. s.83.

[**Note.**—The Code here follows the maxim of English law:—"*Malitia supplet ætatem.*" A juvenile offender actually convicted of any offence not punishable with death, may (by s.5. of Act VI. of 1864) be punished with whipping in lieu of any other punishment to which he may be liable under this Code. "Juvenile" has been held by the Sudder Court at Agra to mean under sixteen years of age.]

69. *Under what circumstances is* insanity *a good defence?*

Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is *either wrong* or *contrary to law.* s.84.

[**Note.**—To obtain an acquittal under this section, a *twofold* ignorance must be proved. If the accused knows that his act is *contrary to law*, he is accountable, though he may believe that his act is morally right. On the other hand, if he knows he is committing an act that is *morally wrong*, he is equally liable, though he may not have known that there was any actual law on the subject.]

70. *Under what circumstances is* intoxication *an excuse for an offence?*

Only where the thing which intoxicated the accused "was administered to him without his knowledge or against his will," (s.85.) Subject to the above proviso:—

"Where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had, if he had not been intoxicated." s.86.

71. *Under what circumstances is the* consent *of the party affected by a given act, a good defence?*

Nothing which is not intended, or known by the doer to be likely to cause death or grievous hurt, is an offence by reason of any harm which it may cause, or be intended to cause, to any person above eighteen years of age who has given consent, express or implied, to suffer that harm; or by reason of any harm which it may be known by the doer to be likely to cause to any such person who has consented to take the risk of such harm. s.87.

[**Note.**—The last quoted section is based upon the general liberty of every man to do that which he likes with his own, even to his own injury. From considerations of public policy, this liberty is not extended to the suffering or taking the risk of death or grievous hurt. This section would, therefore, afford a good defence in the case of an injury inflicted in a fair boxing match, but would not be available to a person killing an adversary in a duel.]

The next section (s.88) is based on an intended benefit to the person to whom the harm is done, and is therefore wider in its terms, extending to persons of any age, and to everything not absolutely *intended to cause death.* Nothing which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended, or known to be likely to cause, to any person for whose benefit it is done in good faith, and who has given consent, express or implied, to suffer or take the risk of that harm; *e. g.*, a hazardous surgical operation, resulting in death.

S. 89 enacts to the like effect as to anything done in good faith for the benefit of a person under twelve years of age, or of unsound mind, by consent of the guardian of such person, and is subject to certain provisos: viz.—

1st. That the exception shall not extend to the intentional causing or attempting to cause death.

2nd. That the exception shall not extend to the doing of anything known to be likely to cause death, or the

voluntary causing or attempting to cause grievous hurt, unless for the preventing of death or grievous hurt, or the curing of grievous disease or infirmity.

3rd. That the exception shall not extend to the *abetting* of any offence, to the committing of which it would not extend. s.89.

Illustrations.—A in good faith, for his child's benefit, submits him to a hazardous surgical operation. A is within the exception.

B, in good faith, for his daughter's benefit, kills her to prevent her falling into the hands of a band of robbers and murderers. B is not within the exception.

The exceptions in the three last quoted sections, do not extend to acts which are offences independently of any harm which they may cause to the person on whose behalf the consent is given. s.91.

Illustration.—The causing of miscarriage (unless in good faith for the purpose of saving the life of the woman) is an offence independently of any harm which it may cause to the woman, and therefore is not justified by her consent.

S. 92 is of similar effect to s.89, but applies to cases in which the circumstances are such that it is impossible for the person specially concerned to give or signify consent, and is subject to the like provisos as s.89, save that the exception in this section expressed is not to extend to the voluntary causing, or attempting to cause hurt (grievous or otherwise), save for the purpose of preventing death or hurt.

Illustration.—Z is carried off by a tiger. A fires at the tiger, in good faith hoping to rescue Z, but kills Z. A is within the exception.

Mere pecuniary benefit is not benefit within the meaning of the above-mentioned sections.

72. *What are the requisites of a valid consent ?*

Consent, to be such as is intended by the Code, must not be given (to the knowledge of the person claiming the

benefit of such consent) under fear of injury or misconception of fact; nor by a person, who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequences of that to which he gives his consent: nor (unless the contrary appears from the context) by a person under twelve years of age. s.90.

(For ss.91, 92, see Quest. 7.

73. *If it be shown that a communication made to a person has caused harm to such person, what is a good defence?*

The accused must shew that such communication was made (1) in good faith, *and* (2) for the benefit of the person to whom it was so made. s.93.

Illustration.—A, a surgeon, in good faith communicates to his patient, thinking he ought to know it, that he cannot live. The patient's death is accelerated by the shock. A is protected by this section.

74. *Under what circumstances is the fact that a given act was done under the influence of threats, a good defence?*

"*Except murder, and offences against the State punishable with death,* nothing is an offence which is done by a person who is compelled to do it by threats which at the time of doing it reasonably cause the apprehension that instant death to that person will otherwise be the consequence; provided the person doing the act did not of his own accord, or from a reasonable apprehension of harm to himself short of instant death, place himself in the situation by which he became subject to such constraint." s.94.

[**Note.**—A married woman may, under appropriate circumstances, claim exemption under this section, but not further or otherwise. The rule of English law, which, in certain offences, assumes that a married woman acts under the compulsion of her husband, has no place in the Code.]

75. *What provision does the Code contain for excluding vexatious prosecutions for trivial matters?*

By s.95, nothing is an offence by reason that it causes, or is intended or known to be likely to cause, any harm, "if that harm is so slight that no person of ordinary sense and temper would complain of such harm."

[Note.—The maxim of English law in such cases is, "*De minimis non curat lex.*" The dipping of a pen without permission into another person's ink, is technically an offence against property. Pressing against him in a crowd, may technically amount to hurt, but it would be absurd to punish such acts as offences. Whether a given case comes within the section, will be a question of fact.

If a frivolous and vexatious charge be actually brought, the complainant may be ordered, under s.270 of the Code of Criminal Procedure, to pay to the accused an amend not exceeding Rs. 50. If the charge be not only *vexatious*, but actually *false*, it may be dealt with under s. 211 of this Code. See Quest. 142.]

76. *With respect to what acts may the right of* private defence *be pleaded?*

"Nothing is an offence which is done in the exercise of the right of private defence." s.96.

[Note.—This must be understood to mean the due exercise of such right, as hereafter defined.]

77. *In what cases does the right of private defence arise?*

Every person has a right, subject to certain special restrictions (see Quest. 78), to defend—

1st. His own body, and the body of any other person, against any offence affecting the human body.

2nd. The property, moveable or immoveable, of himself or any other person, against any act which is an offence falling under the definition of theft, robbery, mischief, or criminal trespass, or any attempt to commit either of such offences. s.97.

78. *What are the specially excepted cases (above referred to), in which the right of private defence does* not *arise?*

1. Acts (not reasonably causing apprehension of death or grievous hurt) done, or attempted to be done (to the knowledge of the person who would otherwise have such right), by, or by the direction of a public servant acting in good faith under colour of his office, *even though such acts be not strictly justifiable by law.* s.99.

2. Cases in which there is time to have recourse to the protection of the public authorities. *Ibid.*

(For s.98, see Quest. 80.)

79. *To the causing of what amount of harm does the right of private defence extend?*

"The right of private defence in no case extends to the inflicting of more harm than *it is necessary to inflict for the purpose of defence.*" s.99.

Subject to this restriction, the right of private defence, either of person or property, extends *in all cases* to the causing of *any harm short of death.* ss.101, 104.

Subject to the same restriction, the right of private defence of the body extends even to the causing of death, in the case of—

1. Such an assault as may reasonably cause apprehension of death or grievous hurt.
2. An assault with intent to commit rape, or to gratify unnatural lust.
3. An assault, with the intention of kidnapping or abducting, or wrongfully confining the person assaulted in such manner as to give him reasonable cause to apprehend that he will be unable to

have recourse to the public authorities for his release. s.100.

Subject to the same restriction, the right of private defence of property extends to the causing of death, in all cases of—

1. Robbery.
2. Housebreaking by night.
3. Mischief by fire committed in any building, tent, or vessel, used as a human dwelling, or for the custody of property.
4. Theft, mischief, or house-trespass, under such circumstances as may reasonably cause apprehension of death or grievous hurt. s.103.

80. *Is there any, and what, right of private defence against the act of an infant, lunatic, or intoxicated person, or a person acting under a misconception of fact?*

Although from the circumstances of the case, the act in question be not an offence, the right of private defence against it is the same as though such act were an offence. s.98.

Illustration.—Z, under the influence of madness, attempts to kill A. Being mad, Z is guilty of no offence, but A has the same right of private defence as if Z were sane. Similarly, if A enters at night a house, which he has a legal right to enter, and finds himself attacked by Z, who mistakes him for a housebreaker:—Z, acting under a misconception of fact, commits no offence; but A has, nevertheless, full right of private defence.

81. *When does the right of private defence commence, and for how long does it continue?*

The right of private defence of the body commences as soon as a reasonable apprehension of danger arises from an

attempt or threat to commit the offence, and continues as long as such apprehension continues. s.102.

[**Note.**—Mere threats, however violent, will not be sufficient, unless a *reasonable apprehension of danger* is thereby produced.]

The right of private defence of property commences when reasonable apprehension of danger to the property commences; and continues—

In the case of *theft*, until the offender has effected his retreat with the property, *or* the assistance of the authorities is obtained, *or* the property has been recovered.

In the case of *robbery*, as long as the offender causes, or attempts to cause to any person death, hurt, or wrongful restraint, or as the fear of instant death, instant hurt, or instant wrongful restraint continues.

In the case of *criminal trespass* or *mischief*, as long as the offender continues in the commission of the offence.

In the case of *housebreaking by night*, as long as the house-trespass continues. s.105.

82. *Where the right of private defence cannot be effectually exercised without risk of harm to an innocent person, is it lawful to run such risk?*

Only where such right of defence is exercised against an assault reasonably causing the apprehension of death. s.106.

Illustration.—A person in danger of his life from an infuriated mob, may fire upon such mob, even at the risk of mortally wounding innocent children mingled with such mob. Not so, if the person in question is not in danger of his life.

(As to excessive exercise of the right of self-defence, see Quest. 197.)

CHAPTER V.

OF ABETMENT.

83. *When is a person said to* abet *the doing of a thing?*

1. When he *instigates* any person to do that thing.

(Instigation here includes not only actual persuasion or suggestion, but the indirect attempt, either by wilful misrepresentation or wilful concealment of a material fact which the instigator was bound to disclose, to cause such thing to be done.)

> **Illustration.**—A, a public officer, is authorised by warrant to apprehend Z. B, knowing that fact, represents to A that C is Z, and thereby intentionally causes A to apprehend C. B abets by instigation the apprehension of C.

2. When he engages with any other person or persons in any *conspiracy* for the doing of that thing, *and any act or illegal omission takes place in pursuance of such conspiracy.*

3. When either prior to, or at the time of the doing of the thing in question, he intentionally *aids,* by any act or illegal omission, the doing of such thing. s.107.

[**Note.**—The wilful concealment of a fact which a person is bound to disclose, may constitute aid under this definition.]

84. *If an act which would ordinarily be an offence is (by reason of absence of guilty knowledge or intent on the part of the principal)* not *that offence in the particular case, is a person abetting such act thereby exonerated?*

He is still held to have abetted that offence. s.108.

The words of the Code are "A person abets an offence who abets either the commission of an offence, or the commission of an act *which would be an offence* if committed by a person capable by law of committing an offence with the same intention or knowledge as that of the abettor."

Explanation 1.—The abetment of the illegal omission of an act may amount to an offence, although the abettor may not himself be bound to do that act.

Explanation 2.—To constitute the offence of abetment, it is not necessary that the act abetted should be actually done, or the effect requisite to constitute the offence actually produced.

Illustration.—A instigates B to murder C. B refuses, or C is wounded, but recovers. A is in either case guilty of abetment of murder, though murder is not actually committed.

Explanation 3.—It is not necessary, to constitute abetment, that the person abetted should be capable by law of committing an offence, or that he should have any guilty intention or knowledge.

Illustration.—A, with a guilty intention, abets a child under seven, or a lunatic, in the commission of an act, which if done by a sane person of full age, would be murder. Such act is, under the circumstances, no offence, but A has nevertheless abetted the offence of murder.

A, with a dishonest intention, instigates B to take property out of the possession of Z, under the false pretence that such property belongs to him, A, and B in good faith takes such property in consequence. B has committed no offence, but A has abetted theft.

Explanation 4.—Abetment of abetment is equally an offence, and it is not necessary to constitute abetment that

the abettor should be in direct communication with the person actually committing the offence. s.108.

Illustration.—A instigates B to instigate C, or a third party unknown to him, A, to murder Z. A has abetted murder.

85. *What is the punishment of abetting a given offence, where no punishment is specially provided by the Code for such abetment?*

In default of special provision, the abetment will, if the act abetted be committed in consequence of the abetment, be punished with the same punishment as that provided for the offence. s.109.

If the offence be *not* committed in consequence of the abetment, then if the offence abetted is one punishable with death or transportation for life, the abetment will be punishable with seven years imprisonment (*maximum*) and fine; or if any act which causes hurt to any person be done in consequence of the abetment, with fourteen years imprisonment (*maximum*) and fine. s.115.

Illustration.—A instigates B to murder C. The offence is not committed. The punishment of murder is death. A is liable to seven years imprisonment and fine, or if any hurt be done to Z in consequence of the abetment, fourteen years imprisonment and fine.

If the offence abetted is one punishable with imprisonment only, the abettor shall be punished with not more than *one-fourth* of the longest term of imprisonment provided for the offence, or *with such fine* as is provided for the offence, or with both. If the abettor or the person abetted is a public servant whose duty it is to prevent the commission of such offence, then the abettor shall be punished with the full fine or *half* the term of imprisonment provided for the offence, or both. s.116.

Illustration.—Offering a bribe to a public servant, whether accepted or not, is punishable under this section.

86. *What is the punishment of abetment where the person abetted does the act with a different intention or knowledge from that of the abettor?*

The punishment provided for the offence which would have been committed if the act had been done *with the intention and knowledge of the abettor.* s.110.

87. *When a particular act is abetted and a different act is done, what is the consequence as regards the abettor?*

He is liable for the act actually committed, *if such act was a probable consequence of the abetment,* but not otherwise. s.111.

Similarly, under s. 113, if the *effect produced* be different from that intended by the abettor.

> **Illustration.**—A instigates a child to put poison into the food of Z. The child by mistake puts the poison into the food of Y, whereby Y is poisoned. If the act of the child was under the circumstances a probable consequence of A's instigation, A is liable for the murder of Y.
>
> A instigates B to burn Z's house, which he does, at the same time, of his own accord, committing theft there. The theft not being a probable consequence of the burning, A is not deemed to have abetted it; but if persons sleeping in the house perish in the flames, that being a probable consequence, A has abetted murder.

If the act for which the abettor is liable under s.111 is committed in addition to the act abetted and constitutes a distinct offence, (*e.g.*, in the case of the house burnt as above, and persons perishing therein) the abettor is liable to punishment for each of the offences. s.112.

88. *Where a person who if absent would be liable to be punished as an abettor, is actually present at the commission of the offence, how is he punishable?*

He is to be deemed to have himself committed such offence. s.114.

(For ss.115, 116, see Quest. 85.)

89. *What is the punishment of abetting an offence by the public or by a particular class?*

Three years imprisonment (*maximum*), or fine, or both. s.117.

To bring a given case within this section, the number or class of persons abetted in the commission of the offence must exceed ten. *Ibid.*

Illustration.—A person publicly exhibiting a placard exhorting a particular class or sect to the commission of any offence, is within this section.

90. *Are there any and what provisions in the Code for punishing aid given to offences so remotely or indirectly as not to constitute actual abetment?*

(May be otherwise stated.)

Under what circumstances is the mere concealment of a design to commit an offence punishable?

Whoever, knowing of the existence of a design to commit an offence, voluntarily conceals by any act *or illegal omission,* or makes any false representation respecting such design, shall be punishable,—if such offence be one punishable with death or transportation for life, and be actually committed,—with imprisonment for seven years (*maximum*) and fine, or if the offence be not committed,—for three years (*maximum*) and fine. s.118.

If the offence be one punishable with imprisonment, and be actually committed,—with one-fourth of the term of imprisonment provided for the offence (*maximum*); or if the offence be not committed,—with one-eighth of such term, (*maximum*) or with the fine provided for the offence, or both. s.120.

If the guilty party be a *public servant bound to prevent the offence,* then if the offence be one punishable with

death or transportation for life, and be actually committed —with imprisonment for ten years (*maximum*). s.119.

If the offence be of any other description, and actually committed,—with one-half (*maximum*) of the longest term of imprisonment, or with the fine provided for the offence, or both. *Ibid.*

If such offence be *not* committed,—then with one-fourth (*maximum*) of the longest term of imprisonment, or with the fine, provided for the offence, or both. *Ibid.*

Illustration.—A, an officer of Police, being legally bound to give information of all designs to commit robbery which may come to his knowledge, and knowing that B designs to commit robbery, omits to give information thereof, with intent to facilitate the commission of the offence. A is within this section.

CHAPTER VI.

OF OFFENCES AGAINST THE STATE.

[**Note.**—This Chapter is only intended to apply to persons owing natural or local allegiance to the Queen.

By s.166 of the Code of Criminal Procedure, no charge of an offence punishable under this Chapter (except s.127) shall be entertained by any Court, unless the prosecution be instituted by order of, or under authority from, the Governor-General of India in Council, or the local Government, or some officer empowered by the Governor-General in Council to order or authorize such prosecution, or unless instituted by the Advocate-General.]

91. *What are the offences referred to in the Code, as being specially 'offences against the State'?*

They may be arranged under four heads. 1. Waging war against the Queen. 2. Attempting, by criminal force, to overawe a leading officer of the Government in the exercise of his lawful powers. 3. Waging war against a power at peace with the Queen. 4. Permitting or aiding the escape of a state prisoner.

92. *What are the offences coming under the head of waging war against the Queen, and how are they respectively punished?*

1. Waging, attempting to wage, or abetting the waging of, such war,—punishable with death or transportation for life, *and forfeiture of all property* (peremptory). s.121.

2. Collecting men, arms, or ammunition, or making any other preparation with a view to waging such war,—punishable with transportation for life or ten years imprisonment (*maximum*), *and forfeiture of all property* (peremptory). s.122.

[**Note.**—To avoid repetition, the words "of either description" appended in the Code (*passim*) to the punishment of imprisonment, are in this Manual omitted, and must therefore be understood in every case in which the particular kind of imprisonment is not specified.]

3. By any act or illegal omission, concealing with intent to facilitate, a design to wage such war,—punishable with ten years imprisonment (*maximum*) and fine. s.123.

93. *What acts are punishable under the head of tempting by criminal force to overawe a leading officer of the Government, and how are they punished?*

Assaulting or wrongfully restraining, or attempting wrongfully to restrain, or overawing, or attempting to overawe, by means or show of criminal force, the Governor-General of India, or the Governor of any Presidency, or a Lieutenant-Governor, or a member of the Council of the Governor-General, or of the Council of any Presidency, with intent to induce or compel such person to exercise or refrain from exercising in any manner any of his lawful powers,—punishable with seven years imprisonment (*maximum*) and fine. s.124.

[**Note.**—The 'essential difference' of this offence, constituting it an offence 'against the State,' is twofold, resting—*first*, on the official position of the person assaulted, &c.; *secondly*, on the intent with which the act is done.]

94. *What are the offences coming under the head of waging war against a power at peace with the Queen?*

1. Waging, attempting to wage, or abetting the waging of such war against the Government of any *Asiatic* power at peace with the Queen;—punishable with transportation for life and fine, or imprisonment for seven years (*maximum*) and fine, or fine only. s.125.

2. Committing, or preparing to commit depredation on the territories of *any* power at peace with the Queen;—punishable with seven years imprisonment (*maximum*), and fine, with forfeiture of all property used or intended to be used in committing, or acquired by, such depredation. s.126.

3. Receiving any property, knowing the same to have been taken in the commission of any of the offences mentioned in the two last preceding sections;—punishable with seven years imprisonment (*maximum*), and fine, and forfeiture of all property so received. s.127.

[**Note.**—The forfeiture under the two last sections is at the discretion of the Judge, and not, as in cases under ss.121, 122, peremptory.]

95. *What are the offences under the head of permitting or aiding the escape of a State prisoner?*

The passive offence of *permitting* the escape of a State prisoner (including a prisoner of war) can only be committed by *a public servant having the custody of such prisoner,* and therefore legally bound to prevent such escape. Any such public servant allowing the escape of such prisoner is punishable, if such escape be allowed *voluntarily,* with transportation for life, or ten years imprisonment (*maximum,*) and fine. s. 128. If *negligently* only, with simple imprisonment for three years (*maximum*) and fine. s.129.

The active offence of *aiding* the escape of such a prisoner, may be committed by any person (public servant or other-

wise) knowing the character in which the prisoner is confined, and includes not only actually assisting the prisoner in escaping, but rescuing or attempting to rescue, harbouring or concealing, or resisting the recapture of such prisoner, and is punishable with transportation for life or ten years imprisonment (*maximum*) and fine. s.130.

Explanation.—A prisoner on parole is considered to have escaped from custody if he goes beyond the limits within which he is allowed to be at large.

[**Note.**—No exception is made under this section, as in the case of harbouring an ordinary offender (see ss.136, 212 and 216) in favour of the husband or wife of the person harboured.

As to permitting or aiding the escape of prisoners generally, see ss.216, 217, 221, 222, 223, 225, Questions 143, 146, 150, 151, 153.]

CHAPTER VII.

OFFENCES RELATING TO THE ARMY AND NAVY.

96. *Who are the persons, and what is the general nature of the offences, dealt with by this chapter?*

The provisions of this chapter are designed to reach such persons as, not being themselves soldiers or sailors (and therefore not subject to military law) abet soldiers or sailors in breaches of discipline, &c. It is expressly provided (s.139), that no person subject to any Articles of War, in the Queen's Army or Navy, shall be punishable under the Code for any of the offences defined in this chapter.

97. *What is the punishment of seducing a soldier or sailor in the Army or Navy of the Queen from his allegiance or duty, or abetting the committing of mutiny by such soldier or sailor?*

Transportation for life, imprisonment for ten years, (*maximum*) or fine. (s.131). If mutiny be committed in consequence of the abetment, the punishment of such abetment may be death. s.132.

98. *What is the punishment of abetting an assault by such a soldier or sailor on a superior officer in the execution of his office?*

Three years imprisonment (*maximum*), and fine, (s.133). If the assault be actually committed in consequence, seven years imprisonment (*maximum*), and fine. s.134.

99. *What is the punishment of abetting desertion?*

Two years imprisonment (*maximum*), or fine, or both. s.135.

100. *What is the punishment of knowingly harbouring a deserter? Is any one exempted from such punishment?*

Punishment.—Two years imprisonment (*maximum*), or fine, or both. Exception;—A wife harbouring her husband. s.136.

101. *What is the punishment of the master or person in charge of a merchant vessel, on board of which any deserter from the Queen's Army or Navy is concealed? How far is ignorance of such concealment an excuse?*

Punishment.—A penalty of Rs. 500 (*maximum*). Ignorance is no excuse, if the offender might have known of such concealment but for some neglect of his duty, or but for some want of discipline on board the vessel. s.137.

[**Note.**—The fact of ignorance would doubtless be considered in awarding the amount of fine.]

102. *What is the punishment of knowingly abetting an act of insubordination by a soldier or sailor in the Queen's Army or Navy?*

Six months imprisonment (*maximum*), or fine, or both, *but only if the act abetted be actually committed in consequence of the abetment.* s.138.

[**Note.**—If the insubordination in question would amount to actual mutiny, its abetment (whether the act be committed or not) may be dealt with under ss.131, 132, Quest. 97.]

(For s.139, see Quest. 96.)

103. *What is the punishment of wearing the dress, or an imitation of the dress, of a soldier in the Queen's Army or Navy?*

This is only an offence, *if the wearer intend that it may be believed that he is such a soldier.* If he do so intend, (whatever his ulterior motive may be), he is punishable with three months imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.140.

CHAPTER VIII.

OF OFFENCES AGAINST THE PUBLIC TRANQUILLITY.

104. *What is the definition of an 'unlawful assembly'?*

An assembly of *five or more* persons, having for their common object any one of the five purposes following (whether such purpose be achieved or not), namely :—

1. To overawe by criminal force, or show of criminal force, the Legislative or Executive Government of India, or the Government of any Presidency, or any Lieutenant-Governor, or any Public Servant in the exercise of the lawful power of such Public Servant.

2. To resist the execution of any law, or legal process.

3. To commit any offence.

4. By means of criminal force, or show of criminal force, to take or obtain possession of any property, or to deprive any person of the enjoyment of a right of way, or of the use of water, or other incorporeal right of which he is in possession or enjoyment, or to enforce any right or supposed right.

5. By means of criminal force, or show of criminal force, to compel any person to do what he is not legally bound, or to omit to do what he is legally entitled, to do. s.141.

(For meaning of 'offence' in this section, see Quest. 34, note.)

[**Note.**—It should be remarked (under the fourth head) that an assembly may be unlawful, even though the common object be to enforce a legal right, or supposed legal right, the use of unlawful means (even though for a lawful end), making the assembly unlawful. Thus, A having enclosed certain land, B and four or more others assemble with a common intent to enforce by violent means a supposed right of way. This is an unlawful assembly, even though A may have wrongfully enclosed the land.]

105. *What constitutes a person a member of an unlawful assembly ?*

Joining, or continuing in such assembly, with a knowledge of facts rendering such assembly unlawful. s.142.

106. *What is the punishment of being a member of an unlawful assembly ?*

Six months imprisonment (*maximum*), or fine, or both. (s. 143.) If the offender is armed with a deadly weapon, *or* joins or continues in such assembly after such assembly has been commanded in manner prescribed by law to disperse,—two years imprisonment (*maximum*), or fine, or both. ss.144, 145.

[**Note.**—The authoritative command to disperse appears to be equivalent to the reading the Riot Act under English law. See s.111 of the Code of Criminal Procedure.]

107. *What constitutes the offence of 'rioting' ? and how is it punishable ?*

"Whenever force or violence is used by an unlawful assembly, *or by any member thereof,* in prosecution of the common object of such assembly, *every member of such assembly* is guilty of the offence of rioting." (s.146.) Punishment.—Two years imprisonment (*maximum*), or fine, or both. (s.147.) If the offender is armed with a deadly weapon,—three years imprisonment (*maximum*), or fine, or both. s.148.

108. *If an offence is committed in prosecution of the common object by one member of an unlawful assembly, what is the liability of the other members?*

Each is guilty of the offence. Similarly, if the offence (though not actually committed in prosecution of the common object) was such as the members knew to be likely to be committed in prosecution of that object. s.149.

109. *What is the punishment of hiring or employing, or conniving at the hiring or employing of any person to become a member of an unlawful assembly?*

The same as if the person so hiring, &c., were himself a member of such assembly, with an additional liability for any offence committed by the person hired, as if committed by himself. s.150.

110. *Is the joining or continuing in an assembly not coming within the definition of an unlawful assembly, in any case punishable, and how?*

Joining or continuing in an assembly of (1) *five or more* persons (2) *likely to cause a disturbance of the public peace,* (3) *after such assembly has been lawfully commanded to disperse,* is punishable with six months imprisonment (*maximum*), or fine, or both. s.151.

[**Note.**—To constitute an offence within the section, the three elements named must be united.]

111. *What is the punishment of obstructing or threatening a public servant in the discharge of his duty endeavouring to disperse an unlawful assembly, or to suppress a riot or affray?*

Three years imprisonment (*maximum*), or fine, or both. s.152.

112. *What is the punishment of malignantly or wantonly (by an illegal act) giving provocation with intent to cause a riot?*

If rioting be committed in consequence,—one year's imprisonment (*maximum*), or fine, or both. If not,—six months imprisonment (*maximum*), or fine, or both. s.153.

113. *In what cases, and to what extent, are persons, other than the actual rioters, punishable in respect of a riot?*

The owner or occupier of any land upon which an unlawful assembly or riot takes place, or any person having or claiming an interest in such land, is punishable with Rs. 1000 fine (*maximum*), if he or his agent knowing of the offence, do not give the earliest possible notice thereof at the nearest police station; and further, do all in his power to prevent or suppress it. s.154.

Whenever a riot is committed for the benefit or on behalf of any person who is the owner or occupier of any land respecting which such riot takes place, or who claims any interest in such land, or in the subject of any dispute which gave rise to the riot, or who has accepted or derived any benefit therefrom, such person shall be punishable with fine, if he or his agent, or manager, having reason to believe that such riot was likely to be committed, or that the unlawful assembly by which such riot was committed was likely to be held, shall not respectively use all lawful means in his or their power to prevent or suppress such assembly or riot. (s.155.) The agent or manager (s.156), under the same circumstances, is punishable in like manner.

Whoever knowingly harbours, in any house or premises under his control, any persons being or about to be hired or employed as members of an unlawful assembly, is punish-

able with six months imprisonment (*maximum*), or fine, or both. s.157.

Whoever is engaged or hired, or offers to be hired, to do or assist in doing any of the acts specified in s.141, as making an assembly unlawful, is punishable with six months imprisonment (*maximum*), or fine, or both; and whoever being so engaged or hired, goes or engages to go armed with any deadly weapon, is punishable with two years imprisonment (*maximum*), or fine, or both. s.158.

114. *What is an 'affray,' and how is it punishable?*

"When two or more persons, *by fighting in a public place,* disturb the public peace, they are said to commit an 'affray'" (s.159), and are punishable with one month's imprisonment (*maximum*), or Rs. 100 fine (*maximum*), or both. s.160.

[**Note.**—The expression 'public place' is somewhat vague, but would probably include not only the public highway, but a church, place of worship, or place of public amusement, an omnibus, railway carriage, &c.]

CHAPTER IX.

OF OFFENCES BY OR RELATING TO PUBLIC SERVANTS.

[**Note.**—By s.167 of the Code of Criminal Procedure, "a charge of an offence punishable under the Indian Penal Code, of which any Judge or any public servant not removable from his office without the sanction of the Government, is accused as such Judge or public servant, shall not be entertained against such Judge or public servant, except with the sanction or under the direction of the local Government, or of some officer empowered by the local Government, or of some Court or other authority to which such Judge or public servant is subordinate, and whose power so to sanction or direct such prosecution the local Government shall not think fit to limit or reserve."]

115. *What is the punishment of a public servant taking a gratification in respect of an official act?*

Whoever, *being*, or *expecting to be*, a public servant, accepts, or agrees to accept, obtains or attempts to obtain, from any person, for himself or for any other person, any gratification whatever (other than legal remuneration) as a motive or reward for doing or forbearing to do any official act, or for showing or forbearing to show, in the exercise of his official functions, favour or disfavour to any person, or for rendering or attempting to render any service or disservice to any person with the Government of India or of any Presidency, or with any public servant as such, shall be punished with three years imprisonment (*maximum*), or fine, or both. s.161.

[**Note.**—By Act XXXI. of 1867, every officer and servant of a Railway Company is to be deemed a public servant within the meaning of this and the four following sections.]

116. *In what sense are the following words and phrases, used in the last-mentioned section, explained: 'expecting to be a public servant,' 'gratification,' 'legal remuneration,' 'motive or reward for doing'?*

'Expecting to be a public servant.' The expectation must be bonâ fide. A person obtaining a gratification under the false pretence that he expects to be a public servant, may be guilty of cheating (s.415), but is not punishable under this section.

'Gratification' extends to everything which may operate as a bribe, and not merely to gratifications estimable in money.

'Legal remuneration' is not restricted to such remuneration only as such public servant *can lawfully demand*, but includes all such as he *may lawfully accept*.

'A motive or reward for doing.' The section includes a gratification *given* as a motive or reward for doing, though the recipients may not have done, or really intend to do, the act in question. s.161.

Illustrations.—A, holding the office of Resident at the Court of a Subsidiary power, accepts a lakh of Rupees from the Minister of that power, as a motive not for any special act, but for generally showing favour in his official functions to that power.

A, a public servant, induces Z erroneously to believe that A's influence has procured him a title or government contract, and to give him money as a reward for so doing.

A, a judge, receives money from B to induce him to decide a lawsuit in B's favour, but notwithstanding decides according to the merits of the case, and against B.

A has in each case committed the offence defined in this Section.

117. *What is the punishment of accepting or attempting to obtain a gratification in order to influence a public servant to the effect described in the last quoted section? Is the public servant in question himself punishable, and how?*

Whoever accepts or agrees to accept, or attempts to obtain a gratification in order to influence a public servant in manner aforesaid *by corrupt or illegal means* is punishable with three years imprisonment (*maximum*), or fine, or both. (s.162). If the pressure brought to bear upon such public servant *be by the exercise of personal influence only*, then the offender is punishable with *simple* imprisonment for one year (*maximum*), or fine, or both. s.163.

Whoever, being a public servant in respect of whom either of the offences defined in the last two preceding sections is committed, *abets the offence*, shall be punished with three years imprisonment (*maximum*), or fine, or both. s.164.

[**Note.**—These three sections are intended to meet the case of a bribe received, not by the public servant himself, but (either with or without his knowledge), by some other person in order to induce him to do that for which he could not himself legally accept a gratification.]

Illustration.—A is a public servant. B, A's wife, receives a present as a motive for using her personal influence with A to induce him to give an office to a particular person. A abets her doing so. B is punishable (under s.163) with simple imprisonment for a term not exceeding one year, or fine, or both. A is punishable (under s.164) with three years imprisonment (*maximum*), or fine, or both.

[**Note.**—It is worthy of notice that the abetment is in this case more severely punished than the offence itself.]

118. *What provision is there in the Code for the case of a public servant indirectly taking a gratification under colour of a gift or purchase ?*

"Whoever being a public servant, accepts or agrees to accept, obtains or attempts to obtain, for himself or for any other person, any valuable thing without consideration, or for a consideration which he knows to be inadequate, from any person whom he knows to *have been, or to be, or to be likely to be,* concerned in any proceeding or business transacted or about to be transacted by such public servant, or

having any connection with the official functions of himself or of any public servant to whom he is subordinate, or *from any person whom he knows to be interested in or related to, the person so concerned,"* shall be punished with *simple* imprisonment for two years (*maximum*), or fine, or both. s. 165.

[**Note.**—A corrupt motive is extremely difficult of proof, and is therefore not made part of the definition of this offence, but is inferred from the fact of the inadequate consideration, coupled with the relative position of the parties.]

Illustrations.—A, a collector, hires from B, who has a case pending before him, a house at Rs. 50 per month, which is actually worth Rs. 200.

A, a Judge, buys of Z, who has a cause pending in A's court, bank shares at a discount, which are selling in the market at a premium, or sells to him at a premium, the market price being at a discount.

A is in either case within the section.

119. *What is the punishment of a public servant knowingly disobeying a direction of the law, with intent to cause injury to any person?*

Simple imprisonment for one year (*maximum*), or fine, or both. s.166.

120. *What is the punishment of a public servant knowingly framing or translating any document incorrectly with intent to cause injury to any person?*

Three years imprisonment (*maximum*), or fine, or both. s.167.

121. *What is the punishment of a public servant unlawfully engaging in trade?*

Simple imprisonment for one year (*maximum*), or fine, or both. s.168.

[**Note.**—Certain public servants are by special enactment (for reasons of public policy) forbidden to engage in trade. The section applies to such persons, not to public servants generally.]

122. *What is the punishment of a public servant purchasing or bidding for, solely or jointly, property which he is legally bound not to purchase or bid for?*

Simple imprisonment for two years (*maximum*), or fine, or both. And the property, if purchased, shall be confiscated. s.169.

[See Note on last Question.]

123. *What is the punishment of personating a public servant?*

The mere wearing of any official garb or token, with the intent that it may be believed that the wearer belongs to that class of public servants by which such garb or token is used, is punishable with three months imprisonment (*maximum*), or fine of Rs. 200 (*maximum*), or both. s.171.

Whoever falsely pretending to hold any particular office as a public servant, or falsely personating any other person holding such office, *does or attempts to do any act under colour of such office,* shall be punished with two years imprisonment (*maximum*), or fine, or both. s.170.

[**Note.**—The act done must have relation to the assumed office, or it will not come within this section, though it may possibly be punishable under the general head of 'cheating.']

CHAPTER X.

OF CONTEMPTS OF THE LAWFUL AUTHORITY OF PUBLIC SERVANTS.

It will be found that the contempts dealt with by this Chapter may be broadly reduced to the four following heads :—

1. Wilfully omitting or evading the performance of a public duty.
2. Refusing to give information lawfully required.
3. Giving false information.
4. Obstructing or disobeying a public servant.

Intentional insult or interruption to a public servant in any stage of a judicial proceeding, is not included in this Chapter, but is dealt with under the head of Offences against Public Justice. s.228, Quest. 156.

[**Note.**—The provisions of this Chapter must be read side by side with the provisions *in pari materiâ* contained in the Codes of Procedure.

By the Code of Criminal Procedure, s.163, "When any such offence as is described in ss.175, 178, 179, 180, or 228, of the Indian Penal Code is committed in the view or presence of any Civil, Criminal, or Revenue Court, it shall be competent to such Court to cause the offender, whether he be a European British subject or not, to be detained in custody; and at any time before the rising of the Court on the same day to take cognizance of the offence, and to adjudge the offender to punishment by fine not exceeding Rs. 200, or by imprisonment in the Civil Jail for a period not exceeding one month, unless such fine be sooner paid. In every such case the Court shall record the facts constituting the contempt, with any statement the offender may make, as well as the finding and sentence. If the Court

in any case shall consider that a person accused of any offence above referred to should be imprisoned, or that a fine exceeding Rs. 200 should be imposed upon him, such Court, after recording the facts constituting the contempt, and the statement of the accused person as before provided, shall forward the case to a Magistrate, or, if the accused person be a European British subject, to a Justice of the Peace, and shall cause bail to be taken for the appearance of such accused person before such Magistrate or Justice of the Peace, or if sufficient bail be not tendered, shall cause the accused person to be forwarded under custody to such Magistrate or Justice of the Peace. If the case be forwarded to a Magistrate, such Magistrate shall proceed to try the accused person in the manner provided by this Act for trials before a Magistrate; and it shall be competent to such Magistrate to adjudge such offender to punishment as provided in the section of the Indian Penal Code under which he is charged. If the case be forwarded to a Justice of the Peace, such Justice of the Peace shall inquire into the circumstances, and shall have the same powers of punishing the offender as are vested by the Statute 53 George III. c.155, s.105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender in the same manner as is provided in that behalf in the said Statute. If such Justice of the Peace shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature. In no case tried under this section shall any Magistrate adjudge imprisonment or a fine exceeding Rs 200 for any contempt committed in his own presence against his own Court.

By s.164 (as amended by Act VIII. of 1869), "When any Court has adjudged an offender to punishment, or forwarded him to a Magistrate or Justice of the Peace for trial, under section 163, for refusing or omitting to do anything which he was lawfully required to do, or for any intentional insult or interruption, the Court may discharge the offender or remit the punishment on his submission to the order or requisition of such Court, or on apology being made to its satisfaction.

By s.165. When any such offence as is described in Chapter X. of the Indian Penal Code, except sections 175, 178, 179, and 180, is committed in contempt of the lawful authority of any Civil, Criminal, or Revenue Court by a European British subject, such offence shall be cognizable only by a Magistrate who is a Justice of the Peace, and such Magistrate shall have the same powers of punishment for such offence as are vested by the Statute 53 George III., c.155, s.105, in a Justice of the Peace for the punishment of an assault, and may deal with the offender, on conviction, in the same manner as is provided in that behalf in the said Statute. If such Magistrate shall consider the offence to require a more severe punishment than a Justice of the Peace is competent to award under the said Statute, he may commit the offender to a Supreme Court of Judicature.

By s.168. A charge of a contempt of the lawful authority of any Court or public servant, or of any other offence against a public servant as such, described in Chapter X of the Indian Penal Code, not falling within s.163 of this Act, shall not be entertained in any Criminal Court, except with the sanction or on the complaint of the Court or public servant concerned, or if such servant is an inferior ministerial servant, with the sanction or on the complaint of his official superior. The prohibition contained in this section

shall not apply to the offences described in ss.189 and 190 of the Indian Penal Code."

Ss.21 and 22 of Act XXIII. of 1861 (amending the Code of Civil Procedure), are to almost precisely similar effect with ss.163, 164 of the Code of Criminal Procedure, above cited.]

124. *What are the offences under the head of omitting or evading the performance of a legal duty, and how are they punishable?*

1. Absconding to avoid service of a summons, notice, or order, issued by a public servant duly authorized. s.172.
2. Preventing service of such a summons, &c., or removing same from any place to which it is lawfully affixed, or preventing the making of any proclamation under due authority. s.173.
3. Non-attendance (in person or by agent as the case may require) in obedience to such a summons, &c., or (having attended) departure before it is lawful to depart. s.174.
4. Wilful omission, (by a person legally bound) to produce or deliver up any document to a public servant. s.175.

The punishment in either of the above cases is simple imprisonment for one month (*maximum*), or Rs. 500 fine, (*maximum*), or both. If the summons, &c., be for attendance, or if the document is to be produced, *in a Court of Justice*,—then simple imprisonment for six months (*maximum*) or Rs. 1000 fine (*maximum*), or both.

5. Wilful omission (by a person legally bound) to give or furnish, at the time and in manner required by law, any notice or information. Punishable with simple imprisonment for one month (*maximum*), or Rs. 500 fine (*maximum*), or both; or if such

notice or information relates to the commission or is required for the prevention of an offence, or for the apprehension of an offender,—with simple imprisonment for six months (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.176.

[**Note.**—For meaning of 'offence' in this section, see Quest. 34, note. See also s.202, Quest. 134.]

6. Wilful omission (by a person legally bound) to furnish assistance to a public servant in the execution of his duty. Punishable with simple imprisonment for one month (*maximum*), or with Rs. 200 fine, (*maximum*) or both. If such assistance be for the purpose of executing any process of a Court of Justice, or of preventing the commission of an offence, suppressing a riot or affray, or apprehending a person charged with an offence, or with having escaped from lawful custody;—then the punishment of withholding such assistance is simple imprisonment for six months (*maximum*), or Rs. 500 fine, (*maximum*) or both. s.187.

[**Note.**—For meaning of 'offence' in this section, see Quest. 34, note.]

(For s.177, see Quest. 126.)

125. *What are the offences under the head of refusing to give information lawfully required, and how are they punishable?*

1. Refusal (when required by a public servant legally competent) to take an oath to state the truth. s.178.
2. Refusal (by a person legally bound) to answer any question lawfully put to him by a public servant (s.179.)

The punishment in either of the above cases is simple

imprisonment for six months (*maximum*), or Rs. 1000 fine (*maximum*), or both.

3. Refusal (when required by a public servant legally competent) to sign any statement (made by the party refusing to sign). Punishable with simple imprisonment for three months (*maximum*), or Rs. 500 fine (*maximum*), or both. s.180.

126. *What are the offences under the head of giving false information, and how are they punishable?*

1. Furnishing, as true, information which the person furnishing same (being legally bound to furnish information) knows or has reason to believe to be false. Punishable with simple imprisonment for six months (*maximum*), or Rs. 1000 fine (*maximum*), or both:—or if the information which the offender is bound to give respects the commission, or is required for the prevention of an offence, or the apprehension of an offender,—imprisonment of either description for two years (*maximum*), or fine, or both. s.177.

(See also s.203, Quest. 135.)

(For meaning of 'offence' in this Section, see Quest. 34, note.)

Illustration.—A landowner, knowing of the commission of a murder on his estate, and informing the magistrate that death was caused by snake bite, or misinforming him as to the direction in which the murderer has gone, is within this section.

2. False statement on oath (by a person legally bound to state the truth on the subject in question). Punishable with imprisonment for three years (*maximum*), and fine. s.181.

3. Wilfully furnishing false information with intent to cause a public servant to use his lawful power to

the injury of another person, or to do or omit anything which he ought not to do or omit. Punishable with imprisonment for six months (*maximum*), or with Rs. 1000 fine (*maximum*), or both. s.182.

(For meaning of 'injury,' see s.44, Quest. 37.)

Illustration.—A falsely informs a public servant that Z has contraband salt on his premises, intending to annoy Z by the consequent search.

127. *What are the offences under the head of obstructing or disobeying a public servant, and how are they punishable?*

1. Wilfully obstructing a public servant in the discharge of his functions. Punishable with imprisonment for three months (*maximum*), or Rs. 500 fine (*maximum*), or both. s.186.
2. Offering resistance to the taking of property by the lawful authority of a public servant. Punishable with imprisonment for six months (*maximum*), or Rs. 1000 fine, or both. s.183.
3. Obstructing sale of property offered for sale by the lawful authority of a public servant. Punishable with imprisonment for one month (*maximum*), or Rs. 500 fine (*maximum*), or both. s.184.
4. Illegally purchasing or bidding for property sold under such authority as aforesaid, on account of any person under a legal incapacity to purchase that property at such sale, or bidding for such property not intending to perform the obligations thereby incurred. Punishable with imprisonment for one month (*maximum*), or Rs. 200 fine (*maximum*), or both. s.185.

[**Note.**—A *public servant* himself illegally purchasing or bidding for such property, is liable to much heavier punishment. s.169, Quest. 122.]

5. Wilfully disobeying an order lawfully promulgated by a public servant. Punishable, if such disobedience tends to cause obstruction or injury to any persons lawfully employed,—with *simple* imprisonment for one month (*maximum*), or Rs. 200 fine (*maximum*), or both. If such disobedience tends to cause a riot or affray, or danger to human life, health, or safety,—then with imprisonment (of either description) for six months (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.188.

(For s.187, see Quest. 124.)

6. Threat of injury to a public servant, or to any person in whom such public servant is believed to be interested, in order to induce such public servant to do or refrain from doing any official act. Punishable with two years imprisonment (*maximum*), or fine, or both. s.189.

[**Note.**—Actual violence to public servants is provided for by ss.152, 332, 333, 353. Insult or interruption in any stage of a judicial proceeding, by s.228.]

In conjunction with the last mentioned, may be enumerated: 7. Threat of injury to induce any person to refrain from applying for protection to a public servant. Punishable with imprisonment for one year (*maximum*), or fine, or both. s.190.

CHAPTER XI.

OF FALSE EVIDENCE AND OFFENCES AGAINST PUBLIC JUSTICE.

128. *When is a person said to 'give false evidence'?*

When being legally bound by an oath or by any express provision of law to state the truth, or being bound by law to make a declaration upon any subject, he makes any statement (verbally or otherwise) which is false, and which he either knows or believes to be false, or does not believe to be true. s.191.

129. *When is a person said to 'fabricate false evidence'?*

When he causes any circumstance to exist, or makes any false entry in any book or record, or makes any document containing a false statement, intending that such circumstance, false entry or false statement may appear in evidence in a judicial proceeding, or in a proceeding taken by law before a public servant as such, or before an arbitrator, and may cause any person who, in such proceeding, is to form an opinion upon the evidence, to entertain an erroneous opinion on any material point. s.192.

Illustrations.—A puts jewels into a box belonging to Z, with the intention that they may be found therein, and that this circumstance may cause Z to be convicted of theft.

A makes a false entry in his shop-book, for the purpose of using it as corroborative evidence in a Court of Justice.

A has 'fabricated false evidence.'

130. *What is the punishment of intentionally giving or fabricating false evidence?*

If such false evidence be given or fabricated for the purpose of being used in any stage of a judicial proceeding,—seven years imprisonment (*maximum*), and fine. In any other case,—three years imprisonment (*maximum*), and fine. s.193.

Explanation.—A trial before a Court Martial, or a Military Court of Requests, or any preliminary investigation, is a judicial proceeding within the meaning of this section. *Ibid.*

If the intent of such evidence be to cause any person to be convicted of a capital offence,—then the punishment is transportation for life, or ten years rigorous imprisonment (*maximum*), and fine. If an innocent person suffer death in consequence of such false evidence,—then the punishment may be either as last above, or death. s.194.

If the intent be to procure conviction of an offence punishable with transportation for life, or imprisonment for seven years or upwards,—then the giver or fabricator of the false evidence shall be punished as a person convicted of that offence would be liable to be punished. s.195.

[**Note.**—Upon a second conviction under either of the three foregoing sections, the offender is liable (under Act VI. of 1864) to be sentenced to whipping as an additional punishment.

By s.169 of the Code of Criminal Procedure, no charge of an offence described in ss.193, 194, 195, 196, 199, 200, 205, 206, 207, 208, 209, 210, 211, or 228 of this Code, committed before or against a Civil or Criminal Court, shall be entertained without the sanction of such Court, or of some other Court to which such Court is subordinate.]

(For meaning of 'offence' in the two last sections, see Quest. 34, note.)

131. *What is the punishment of wilfully using or attempting to use false evidence?*

The same as that of giving or fabricating false evidence. s.196.

[**Note.**—As to the sanction necessary to a charge under this section, see note to last question.]

132. *What are the offences placed by the Code upon the same footing as to punishment as the giving of false evidence?*

1. Issuing or signing any certificate required by law to be given or signed, or by law made evidence of any fact, knowing or believing that such certificate is false in any material point. s.197.

2. Corruptly using or attempting to use as true any such certificate as last aforesaid. s.198.

3. Making a false statement on any material point in any declaration by law receivable as evidence. s.199.

4. Corruptly using or attempting to use as true any such declaration as last aforesaid. s.200.

Explanation.—A declaration which is inadmissible by reason of some informality, may still be within the meaning of ss.199, 200.

[**Note.**—As to the sanction necessary to a charge under ss.199, 200, see note to Quest. 130.]

133. *What is the punishment of causing the disappearance of any evidence of an offence, or giving false information concerning it,* in order to screen the offender?

If the offence in question is one punishable with death, —then seven years imprisonment (*maximum*), and fine. If such offence is punishable with transportation for life, or

imprisonment which may extend to ten years,—then imprisonment for three years (*maximum*), and fine. If such offence is punishable with imprisonment for less than ten years,—then imprisonment of the description provided for the offence, for one-fourth (*maximum*) of the longest term provided for the offence, or fine, or both. s.201.

Illustration.—A knowing that B has murdered Z, assists B to hide the body with the intention of screening B from punishment. A is liable under this section to seven years imprisonment and fine.

134. *What is the punishment of an intentional omission (by a person legally bound) to give information respecting an offence?*

Six months imprisonment (*maximum*), or fine, or both. s.202.

(For meaning of 'offence' in the two last sections, see Quest. 34, note.)

[**Note.**—This section is superfluous, such an omission being already sufficiently provided for by s.176, Quest. 124.]

135. *What is the punishment of knowingly giving false information respecting an offence?*

Two years imprisonment (*maximum*), or fine, or both. s.203.

[**Note.**—This section is wholly independent of any legal obligation on the part of the informer to give information, and of any intention on his part to *screen the offender*, being therein distinguishable from ss.177 and 201, Questions 126, 133.]

(For meaning of 'offence' in this section, see Quest. 34, note.)

136. *What is the punishment of secreting, destroying, or defacing (in order to prevent its production as evidence) a document, which the offender may be lawfully compelled to produce before a Court of Justice or a public servant?*

Two years imprisonment (*maximum*), or fine, or both. s.204.

(See also s.201, Quest. 133.)

137. *What is the punishment of personating another, and in such assumed character doing any act in a suit or criminal proceeding ?*

Three years imprisonment (*maximum*), or fine, or both. s.205.

[Note.—As to the sanction necessary to a charge under this section, see note to Quest. 130.]

138. *What is the punishment of fraudulently removing, concealing, or transferring property, with intent to prevent its seizure as a forfeiture, or in execution of a judicial decree ?*

Two years imprisonment (*maximum*), or fine, or both. s.206.

[Note.—As to the sanction necessary to a charge under this section, see note to Quest. 130.]

139. *What is the punishment of fraudulently receiving or claiming any property with the above intent ?*

The same as above mentioned. s.207.

[Note.—As to the sanction necessary to a charge under this section, see note to Quest. 130.]

140. *What is the punishment of fraudulently obtaining* (s.210) *or submitting to* (s.208) *a decree or order for a sum not due, or for any property to which the claimant is not entitled, or of fraudulently obtaining or submitting to the execution of a decree already satisfied ?*

The same as above mentioned.

Illustration.—A institutes a suit against Z. Z knowing that A is likely to obtain a decree against him, fraudulently suffers a judgment for a larger amount to pass against him at the suit of B (who has no just claim against him), in order that B may for Z's benefit share in the proceeds of any sale of Z's property, which may be made under A's decree. B is punishable under s.210 for obtaining, and Z under s.208 for submitting to such decree.

[**Note.**—As to the sanction necessary to a charge under either of these sections, see note to Quest. 130.]

141. *What is the punishment of* fraudulently, *or* with intent to injure or annoy any person, *making a false claim in a Court of Justice ?*

Two years imprisonment (*maximum*), and fine. s.209.

[**Note.**—As to the sanction necessary to a charge under this section, see note to Quest. 130.]

142. *What is the punishment of wilfully, and with intent to injure, falsely charging a person with a criminal offence, or, without lawful ground, causing any criminal proceeding to be instituted against a person ?*

Two years imprisonment (*maximum*), or fine, or both. If the offence charged be punishable with death, transportation for life, or imprisonment for seven years or upwards, *and any criminal proceeding be actually instituted,* seven years imprisonment (*maximum*), and fine. s.211.

(For meaning of 'offence' in this section, see Quest. 34, note).

[**Note.**—As to the sanction necessary to a charge under this section, see note to Quest. 130. If the offence charged be the commission of an unnatural offence, the accuser is upon a second conviction (by Act IV. of 1864) liable to be sentenced to whipping in addition to any other punishment.

The case of giving *false information,* no charge being actually made, or proceedings instituted, is met by s.182, Quest. 126.]

143. *What is the punishment of harbouring a person known or believed to be an offender, with intent to screen him from legal punishment ? Is any person*

exempted from punishment in respect of such harbouring?

If the offence of the person so harboured is punishable with death,—then the harbourer shall be punished with five years imprisonment (*maximum*), and fine. s.212.

If the offence is punishable with transportation for life, or ten years imprisonment,—then the harbourer shall be punished with three years imprisonment (*maximum*), and fine. *Ibid.*

If the offence is punishable with imprisonment which may extend to one, but not to ten years,—then the harbourer shall be punished with imprisonment of the description, and for one-fourth (*maximum*) of the longest term, provided for the offence, or fine, or both. *Ibid.*

Exception.—The husband or wife of an offender is not punishable for harbouring such offender. *Ibid.*

Section 216 deals with the like offence, with the aggravation that the person harboured has either *escaped from lawful custody*, or *has been lawfully ordered by a public servant to be apprehended for an offence.* By an apparent oversight, such aggravation of the offence does not increase the punishment, save in the case where the person harboured is charged with a capital offence, in which case the harbourer may be sentenced to seven years imprisonment (*maximum*), and fine. The exception as to husband and wife of the offender is repeated in this section.

(For meaning of 'offence' in these two sections, see Quest. 34, note.)

144. *In what cases is the compounding of an offence punishable under the Penal Code, and how?*

"Whoever accepts or agrees to accept or attempts to obtain any gratification for himself or any other person, or any restitution of property to himself or any other person

in consideration of his concealing an offence or screening any person from legal punishment for any offence, or not proceeding against any person for the purpose of bringing him to legal punishment, shall, if the offence be punishable with death, be punished with" seven years imprisonment (*maximum*), and fine. If the offence is punishable with transportation for life, or ten years imprisonment,—then with three years imprisonment (*maximum*), and fine. If the offence is punishable with imprisonment not extending to ten years,—then with imprisonment of the kind, and for one-fourth (*maximum*) of the longest term provided for the offence, or fine, or both. s.213.

By s. 214, the person giving or offering or agreeing to give or cause such gratification or restitution of property, is made liable to precisely similar punishments, according to the nature of the original offence.

(For meaning of 'offence' in these sections, see Quest. 34, note.)

Exception.—The provisions of the two last-mentioned sections "do not extend to any case in which the offence consists only of an act irrespective of the intention of the offender, and for which act the person injured may bring a civil action." *Ibid.*

Illustrations.—A assaults B with intent to commit murder. Here the special intent being an essential part of the offence, it is not within the exception, and cannot be compounded.

A (without any special intent) assaults B. Such assault may be the subject of a civil action and may therefore be compounded. By the same rule, adultery may, but bigamy may not, be compounded.

145. *Under what circumstances, and how, is the taking or agreeing to take a gratification for assisting to recover stolen property punishable under the Code?*

Punishable—*unless the person in question uses all means in his power to cause the offender to be apprehended and*

convicted of the offence,—with two years imprisonment (*maximum*), or fine, or both. s.215.

[**Note.**—This section is directed against the professional go-between, who makes it a business to negotiate the return of stolen property for a reward.]

(For s.216, see Quest. 143.)

146. *What is the punishment of a public servant who, with intent to save a person from legal punishment, or property from forfeiture or any charge to which it is liable by law, wilfully disobeys a direction of the law ?*

Two years imprisonment (*maximum*), or fine, or both. s.217.

147. *What is the punishment of a public servant who with like intent wilfully frames any record or writing in an incorrect manner ?*

Three years imprisonment (*maximum*), or fine, or both. s.218.

148. *What is the punishment of a public servant, in a judicial proceeding, corruptly or maliciously making or pronouncing any report, order or decision which he knows to be contrary to law ?*

Seven years imprisonment (*maximum*), or fine, or both. s.219.

149. *What is the punishment of an official with like knowledge corruptly or maliciously committing any person for trial or keeping any person in confinement ?*

Seven years imprisonment (*maximum*), or fine, or both. s.220.

150. *What is the punishment of a public servant legally bound to apprehend or keep in confinement any person charged with, or liable to be apprehended for, an offence,* intentionally *omitting to apprehend, or suffering or aiding the escape of, such person?*

1. If the offence with which the person in question is charged is punishable with death,—then seven years imprisonment (*maximum*), with or without fine. s.221.
2. If such offence is punishable with transportation for life, or ten years imprisonment,—then three years imprisonment (*maximum*), with or without fine. *Ibid.*
3. If such offence is punishable with imprisonment for less than ten years,—then two years imprisonment (*maximum*), with or without fine. *Ibid.*

If the person in question was actually under sentence of a Court of Justice for any offence [*or* lawfully committed to custody] then the punishment in the three cases respectively above stated, is increased (according to the sentence passed on the offender) to—

1. Transportation for life, or fourteen years imprisonment (*maximum*), with or without fine.
2. Seven years imprisonment (*maximum*), with or without fine.
3. Three years imprisonment (*maximum*), or fine, or both. (Applicable where the offender is either sentenced to not exceeding ten years imprisonment, or is "lawfully committed to custody." s.222.

[**Note.**—The words 'lawfully committed to custody' do not appear in the Code itself, but are interpolated by Act IV. of 1867.]

151. *What is the punishment of a public servant* negligently *suffering the escape of a person charged with or convicted of an offence* [or *lawfully committed to custody ?*]

Simple imprisonment for two years (*maximum*), or fine, or both. s.223.

(See Note on last Question.)

152. *What is the punishment of a person resisting his lawful apprehension, or escaping from lawful custody ?*

Two years imprisonment (*maximum*), or fine, or both, in addition to the punishment of the original offence. s.224.

(For meaning of 'offence' in this and the three foregoing sections, see Quest. 34, note.)

153. *What is the punishment of obstructing the lawful apprehension of another person, or rescuing or attempting to rescue such person from lawful custody ?*

If the person to be apprehended, or attempted to be rescued, is charged with an offence punishable with transportation for life or ten years imprisonment,—then three years imprisonment (*maximum*), and fine.

If such person is charged with a capital offence, or is actually under sentence of transportation, penal servitude, or imprisonment for ten years or upwards,—then seven years imprisonment (*maximum*), and fine.

If such person be under sentence of death,—then transportation for life, or ten years imprisonment (*maximum*), and fine.

In any other case,—two years imprisonment (*maximum*), or fine, or both. s.225.

154. *What is the punishment of unlawful return from transportation?*

Transportation *for life* (peremptory), preceded by 3 years rigorous imprisonment (*maximum*), and fine. s.226.

155. *What is the punishment of violation of a condition upon which a remission of punishment has been granted?*

Renewal of the original sentence, or so much thereof as has not been actually suffered. s.227.

156. *What is the punishment of an intentional insult or interruption to a public servant sitting in any stage of a judicial proceeding?*

Six months simple imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.228.

[**Note.**—As to other forms of contempt, see Chapter X.]

157. *What is the punishment of a person, by personation or otherwise, wilfully allowing himself to be empannelled or sworn, or voluntarily serving, as a juryman or assessor in a case in which he is not entitled by law to serve as such juryman or assessor?*

Two years imprisonment (*maximum*), or fine, or both. s.229.

CHAPTER XII.

OF OFFENCES RELATING TO COIN AND GOVERNMENT STAMPS.

[**Note.**—It should be borne in mind that (by s. 75) whoever, having been convicted of an offence punishable under this Chapter or Chap. XVII. with imprisonment of either description for three years or upwards, shall be guilty of any offence punishable under either of such chapters with imprisonment of either description for three years or upwards, shall be subject for every such subsequent offence to transportation for life or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for more than ten years.]

158. *Define 'Coin,' 'Queen's Coin'?*

Coin is metal used as money, stamped and issued by the authority of some Government in order to be so used.

Coin stamped and issued by the authority of the Queen, or of any Government in the Queen's dominions, is designated as the Queen's Coin. s.230.

159. *What is the punishment of counterfeiting coin, and to what acts of a kindred nature does such punishment extend?*

The punishment is seven years imprisonment (*maximum*) and fine. Extended to the performing any part of the process of counterfeiting coin, or (for purposes of deception) causing a genuine coin to appear like a different coin. s.231.

(For meaning of 'counterfeiting,' see s.28, Quest. 26.)

If the coin counterfeited be Queen's coin, the offender is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.232.

160. *What is the punishment of making, mending, buying or selling any instrument for counterfeiting coin?*

Three years imprisonment (*maximum*), and fine. s.233.

If Queen's coin,—seven years imprisonment (*maximum*), and fine. s.234.

161. *What is the punishment of being in possession of instruments or material for the purpose of using the same for counterfeiting coin?*

Three years imprisonment (*maximum*), and fine. If Queen's coin,—ten years imprisonment (*maximum*), and fine. s.235.

[**Note.**—The offender need not, under this or the two preceding sections, intend himself to use the instrument or material for the purpose of counterfeiting. It is sufficient if he "knows or has reason to believe that it is intended to be so used." Under such circumstances, it would seem that an offender punishable under s.234, would be also necessarily within s.235.]

162. *What is the punishment of a person who, being within British India, abets the counterfeiting of coin out of British India?*

The same as if he abetted the counterfeiting of coin within British India. s.236.

Illustration.—A person in India, supplying materials for coining to a person out of India, is within this section.

[**Note.**—No distinction is, in this instance, made as to Queen's Coin.]

163. *What is the punishment of importing or exporting counterfeit coin?*

Three years imprisonment (*maximum*), and fine. s.237.

If Queen's coin, transportation for life, or ten years imprisonment (*maximum*), and fine. s.238.

164. *What is the punishment of possession of coin, known when acquired to be counterfeit?*

Three years imprisonment (*maximum*), and fine. s.242.

If Queen's coin, seven years imprisonment (*maximum*), and fine. s.243.

Similarly (by ss.252, 253), as to genuine coin or Queen's coin fraudulently diminished or altered.

[**Note.**—The mere possession of counterfeit coin, *not* known when acquired to be counterfeit, is of course no offence.]

165. *What is the punishment of delivery (or attempted delivery) to another person of coin known when acquired to be counterfeit?*

Five years imprisonment (*maximum*), and fine. s.239.

If Queen's coin, ten years imprisonment (*maximum*), and fine. s.240.

Similarly (by ss.250, 251,) as to genuine coin or Queen's coin fraudulently diminished or altered.

166. *What is the punishment of knowingly delivering to another base coin* not *known when acquired to be counterfeit?*

Two years imprisonment (*maximum*), or fine to the amount of ten times the value (*maximum*) of the coin counterfeited, or both. s.241.

Similarly (by s.254) as to diminished or altered coin.

[**Note.**—No distinction is made as to Queen's coin.]

167. *What is the punishment of a person, employed in a*

mint in British India, causing any coin to be of a different weight or composition from that fixed by law?

Seven years imprisonment (*maximum*), and fine. s.244.

168. *What is the punishment of unlawfully taking from a mint any coining instrument?*

Seven years imprisonment (*maximum*), and fine. s.245.

169. *What is the punishment of fraudulently diminishing the weight or altering the composition of a coin?*

Three years imprisonment (*maximum*), and fine. s.246.

If Queen's coin, seven years imprisonment (*maximum*), and fine. s.247.

170. *What is the punishment of altering the appearance of any coin with intent that it shall pass as a coin of a different description?*

Three years imprisonment (*maximum*), and fine. s. 248.

If Queen's coin, seven years imprisonment (*maximum*), and fine. s.249.

[**Note.**—These two sections appear somewhat supererogatory, inasmuch as by s. 231, (Quest. 159) such an alteration of any coin is brought within the general definition of counterfeiting, and is thereby made punishable with seven years imprisonment, or, in the case of Queen's coin (s.232), transportation for life.]

(As to ss. 250, 251, see Quest. 165.
As to ss. 252, 253, see Quest. 164.
As to s. 254, see Quest. 166.)

171. *What is the punishment of counterfeiting a Government stamp?*

Transportation for life, or ten years imprisonment (*maximum*), and fine. s.255.

172. *What is the punishment of being in possession of* (*s.*256) *or making, buying or selling,* (*s.*257) *any instrument or material for the purpose of counterfeiting a Government stamp ?*

Seven years imprisonment (*maximum*), and fine.

173. *What is the punishment of knowingly possessing for the purpose of use or sale* (*s.*259) *or selling or offering for sale* (*s.*258) *or using as genuine* (*s.*260) *a counterfeit Government stamp ?*

Seven years imprisonment (*maximum*), and fine.

174. *What is the punishment of fraudulently effacing any writing from a substance bearing a Government stamp, or removing a stamp from any writing, in order that such stamp may be used for a different writing or document ?*

Three years imprisonment (*maximum*), or fine, or both. s.261.

175. *What is the punishment of fraudulently using a Government stamp which has been already used ?*

Two years imprisonment (*maximum*), or fine, or both. s.262.

176. *What is the punishment of fraudulently erasing from a Government stamp any mark denoting that the same has been used, or knowingly selling or disposing of a stamp from which such a mark has been erased ?*

Three years imprisonment (*maximum*), or fine, or both. s.263.

CHAPTER XIII.

OF OFFENCES RELATING TO WEIGHTS AND MEASURES.

177. *What are the different offences under the above head, and how are they punishable?*

1. Fraudulently using any false instrument for weighing. s.264.
2. Fraudulently using any false weight or measure, or fraudulently using any weight or measure as a different weight or measure. s.265.
3. Being in possession of any false weighing instrument, weight or measure, intended to be fraudulently used. s.266.
4. Making or selling any false weighing instrument, weight or measure, intended or likely to be used as true. s.267.

The punishment is in either case the same, viz., one years imprisonment (*maximum*), or fine, or both.

CHAPTER XIV.

OF OFFENCES AFFECTING THE PUBLIC HEALTH, SAFETY, CONVENIENCE, DECENCY, AND MORALS.

178. *When is a person said to be guilty of a 'public nuisance' ?*

When he "does any act or is guilty of an illegal omission which causes any common injury, danger, or annoyance to the public, or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right." s.268.

A common nuisance is not excused on the ground that it causes some convenience or advantage. *Ibid.*

Illustrations.—The carrying on, in a populous neighbourhood, of a business producing an injurious or disagreeable effluvium, or a constant and deafening noise—the obstruction of a public road.

179. *What is the punishment of a public nuisance ?*

A variety of acts coming within the definition of a public nuisance, are by different sections of the Code made liable to special punishments. In any case not so specially provided for, the punishment of a public nuisance is a fine of Rs. 200 (*maximum*). s.290.

180. *What is the punishment of an act likely to spread the infection of a disease dangerous to life?*

If such act be *negligently* done, six months imprisonment (*maximum*), or fine, or both. s. 269. If *malignantly*, two years imprisonment (*maximum*), or fine, or both. s.270.

181. *What is the punishment of wilful disobedience to a quarantine rule?*

Six months imprisonment (*maximum*), or fine, or both. s.271.

182. *What are the offences under the head of adulteration of food, &c., and how are they punishable?*

1. Adulteration of any article intended for sale as food or drink, *so as to render such article noxious.* s.272.
2. Knowingly selling or offering for sale any article which has been rendered *or has become* noxious or unfit for food or drink. s.273.
3. Adulteration of drugs in such manner as either to render them noxious, change their operation, or lessen their efficacy. s.274.
4. Knowingly selling or offering for sale, or causing to be used for medicinal purposes, any drug so adulterated as aforesaid. s.275.
5. Knowingly selling any drug as a different drug. s.276.

The punishment is in either case the same, viz., six months imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both.

[**Note.**—Adulteration of food or drink in such manner as not to render it noxious to health (*e.g.*, watering milk) is not punishable specially as adulteration, though it would probably be so under the general head of 'cheating.' s.415.]

183. *What is the punishment of wilfully fouling the water of a public spring or reservoir, and what is the test of such fouling?*

The punishment is three months imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.277.

The test of injury is the rendering of the water *less fit for the purpose for which it is ordinarily used. Ibid.*

184. *What is the punishment of voluntarily vitiating the atmosphere so as to render it noxious to the public health?*

Rs. 500 fine (*maximum*). s.278.

185. *What is the punishment of rash or negligent riding or driving in a public way, and what is the test of such negligence?*

Punishment, six months imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.279.

The test of the offence is that the manner of such riding or driving is such as is *likely to cause hurt or injury to any other person. Ibid.*

186. *What is the punishment of rash or negligent navigation of a vessel?*

The same as last above, but in this case *life must be actually endangered, or actual injury caused.* s.280.

187. *What is the punishment of exhibiting any false light, mark or buoy, with intent to mislead any navigator?*

Seven years imprisonment (*maximum*), or fine, or both. s.281.

188. *What is the punishment of knowingly or negligently conveying a passenger in a dangerously overloaded vessel?*

Six months imprisonment (*maximum*), or Rs. 1000 fine, or both. s.282.

189. *What is the punishment of wilfully causing danger or obstruction to any person in a public way or line of navigation?*

Rs. 200 fine (*maximum*). s.283.

190. *What is the punishment of such rash or negligent conduct with respect to either of the following;—any poisonous substance (s.284); any fire or combustible matter (s.285); any explosive substance (s.286); any machinery (s 287); pulling down or repairing buildings (s.288); any animal (s. 289);—as to* endanger human life?

Six months imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. (Extended in the case of an animal negligently kept, s.289, to danger of *grievous hurt*).

(For s.290, see Quest. 179.)

191. *What is the punishment of repeating or continuing a nuisance after having been enjoined by lawful authority not to continue the same?*

Simple imprisonment for six months (*maximum*), or fine, or both. s.291.

[**Note.**—By the Code of Criminal Procedure, s.62, "Any Magistrate may enjoin any person not to repeat or continue a public nuisance." This section declares the punishment in the event of non-compliance with such injunction.]

192. *What is the punishment of selling, importing, printing, or publicly exhibiting* (*s.*292), *or having in one's possession for such purpose* (*s.*293) *any obscene book, print, &c.; or of singing, or uttering in any public place, to the annoyance of others, any obscene song or words* (*s.*294).

Three months imprisonment (*maximum*), or fine, or both.

CHAPTER XV.

OF OFFENCES RELATING TO RELIGION.

193. *What are the offences dealt with under this head by the Code, and how are they punishable?*

1. Injuring or defiling any place of worship, or object held sacred, with intent to insult the religion of *any class of persons*. s.295.

Punishable with two years imprisonment (*maximum*), or fine, or both.

2. Wilfully disturbing a religious assembly. s.296.
3. Trespassing in a place of worship or burial place offering any indignity to a corpse, or disturbing persons performing funeral ceremonies, with intent to wound the feelings, or insult the religion of *any person*. s.297.
4. Uttering any word, making any gesture, or exhibiting any object to a person, with intent to wound the religious feelings of such person. s.298.

Punishable with one year's imprisonment (*maximum*), or fine, or both.

CHAPTER XVI.

OF OFFENCES AFFECTING THE HUMAN BODY.

CULPABLE HOMICIDE.

194. *What are the different kinds or classes of homicide, and which of them are offences under the Code?*

Homicide is either—1. Accidental. 2. Justifiable. 3. Culpable. The last mentioned is alone an offence under the Code, accidental and justifiable homicide being, in effect, excluded from the category of offences by the Chapter of General Exceptions.

195. *When is a person said to commit culpable homicide?*

When he "causes death by doing an act with the intention of causing death, or with the intention of causing such bodily injury as is likely to cause death, or with the knowledge that he is likely by such act to cause death." s.299.

Explanation 1.—A person who causes bodily injury to another who is labouring under any disease or bodily infirmity, and thereby accelerates his death, is deemed to have caused his death.

Explanation 2.—Where death is caused by bodily injury, the person who causes such injury is deemed to have caused the death, though by proper remedies and skilful treatment death might have been prevented.

Explanation 3.—The causing of the death of a child in the mother's womb is not homicide. But it may amount to culpable homicide to cause the death of a child partly brought forth, though such child may not have breathed or have been completely born. *Ibid.*

Illustrations.—A lays sticks and turf over a pit, with intent to thereby cause death, or knowing that death is likely to be thereby caused. Z falls in, and is killed. A has committed culpable homicide.

A, shooting at a fowl with intent to kill and steal it, accidentally kills B, who is hidden behind a bush. Here A, not having known that his act was likely to cause death, is not guilty of culpable homicide.

].—A here escapes the guilt of culpable homicide, not by reason of the General Exception as to "accident" (s.80), which is restricted to the doing of a lawful act by lawful means, but by reason that the necessary *intent* being absent, his act does not come within the definition of culpable homicide.]

196. *Under what circumstances does culpable homicide amount to* murder?

With five exceptions (to be hereafter noticed), culpable homicide is murder, if the act by which death is caused is done:—

1. With intent to cause death.
2. With intent to cause such injury as the offender knows to be likely to cause death.
3. With intent to cause such injury as is sufficient in the ordinary course of nature to cause death.
4. With knowledge that such act is so imminently dangerous, that it must in all probability cause death, or such bodily injury as is likely to cause death, *and without fair excuse for incurring the risk thereof.* s.300.

Illustrations.—A shoots Z with intent to kill him.

A knowing that Z is labouring under such disease, that a blow is likely to cause his death, strikes him, though not absolutely *intending* to cause his death.

A intentionally gives Z a sword cut sufficient, in the ordinary course of nature, to cause death.

A, without reasonable excuse, fires a loaded gun into a crowd of persons (though without absolutely intending to kill any particular person), and hits Z.

In either of the cases stated, if Z dies in consequence of the act, A is guilty of murder.

197. *What are the five excepted cases above referred to, in which culpable homicide is* not *murder ?*

Exception 1. "Culpable homicide is not murder, if the offender, whilst deprived of the power of self-control by grave and sudden provocation, causes the death of the person who gave the provocation, *or causes the death of any other person by mistake or accident.*" s.300.

Provided—1st. That the provocation is not sought or voluntarily provoked by the offender as an excuse for the offence.

2nd. That the provocation is not given by anything done in obedience to the law, or by a public servant in the lawful exercise of his powers.

3rd. That the provocation is not given by anything done in the lawful exercise of the right of private defence. *Ibid.*

Illustration.—A attempts to pull Z's nose. Z, in the exercise of the right of private defence, strikes A to prevent him from doing so. A, thereby provoked to sudden and violent passion, strikes and kills Z. This is murder, inasmuch as the provocation was given by an act done in the exercise of the right of private defence.

Exception 2.—Culpable homicide is not murder, if the offender, in the exercise in good faith of the right of private defence, *without premeditation and without intent to do more harm than is necessary for the purpose of such defence,* exceeds the power given to him by law, and causes death. *Ibid.*

Illustrations.—Z attempts to horsewhip A, not in such a manner as to cause grievous hurt to A. A believing in good faith that he can by no other means prevent himself from being horsewhipped, shoots Z dead. A has committed culpable homicide, but not murder.

Z, finding A trampling on his corn, uses a deadly weapon to punish him. This degree of violence is not justifiable (see s.103), and a right of private defence arises in turn to A. If, by means of an excessive exercise of such right, he causes Z's death, his offence will not amount to murder.

Exception 3. "Culpable homicide is not murder, if the offender being a public servant, or aiding a public servant acting for the advancement of public justice, exceeds the powers given to him by law, and causes death by doing an act which he *in good faith believes to be lawful and necessary for the due discharge of his duty as such public servant, and without ill-will toward the person whose death is caused.*" *Ibid.*

Illustration.—A, being a public servant, entrusted with the safe custody of Z, finds Z in the act of escaping, and in trying to prevent his escape, mortally wounds him. A is within the exception.

[**Note.**—In considering the effect of this exception, due regard must be had to s.76, whereby persons believing themselves (from a mistake of fact) bound by law to do a thing,—and s.78, whereby persons bonâ fide acting under an order (even though irregular) of a Court of Justice,—are exonerated.]

Exception 4.—"Culpable homicide is not murder, if it is committed without premeditation, in *a sudden fight, in the heat of passion, upon a sudden quarrel.* and without the offender's having taken *undue advantage,* or acted in a *cruel* or *unusual manner.*" *Ibid.*

It is immaterial which party offers the provocation or commits the first assault.

Exception 5.—"Culpable homicide is not murder when the person whose death is caused, *being above the age of eighteen years,* suffers death or takes the risk of death with his own consent." *Ibid.*

Illustration.—Z, a Hindoo widow, consents to be burned with the corpse of her husband. A kindles the pile. A has committed culpable homicide in either case:—murder or not murder according as the victim is or is not below the age of eighteen. The greater or less degree of guilt of a person who kills another in a duel, will be estimated in like manner.

[**Note.**—Eighteen is, by the law of British India, the age of majority.]

198. *If a person, by doing anything which he knows to be likely to cause death, commits culpable homicide by causing the death of any person whose death he does not intend or know himself to be likely to cause, what is the degree of the culpable homicide thereby committed?*

The same as if the offender had caused the death of the person whose death he intended or knew himself to be likely to cause. s.301.

199. *What is the punishment of murder?*

Death, or transportation for life, and fine. s.302.

If the murderer is already under sentence of transportation, then the punishment is death, without any alternative. s.303.

200. *What is the punishment of culpable homicide not amounting to murder?*

If the act causing death is done *with intent to cause death, or such bodily injury as is likely to cause death,* transportation for life, or ten years imprisonment (*maximum*), and fine. If not done with such intent (though with the knowledge that it is likely to cause death), ten years imprisonment (*maximum*), or fine, or both. s. 304.

201. *What is the punishment of abetment of suicide?*

Ten years imprisonment (*maximum*), and fine. s.306.

If the person whose suicide is abetted is under eighteen years of age, insane, delirious, an idiot, or intoxicated, the punishment of the abettor may be either the above, or transportation for life, or death. s.305.

202. *What constitutes, and what is the punishment of, an attempt to murder?*

Doing any act "with such intention or knowledge, and under such circumstances, that if the doer by that act caused death, he would be guilty of murder."

Punishable with ten years imprisonment (*maximum*), and fine; or *if hurt be caused by the attempt*, either the above, or transportation for life. s.307.

Illustrations.—A, with intent to cause the death of a child of tender years, exposes it in a desert place. A is punishable under this section, though death may not ensue.

A, intending to murder Z, buys a gun and loads it. A has not yet committed the offence defined by this section. A fires the gun at Z. He is punishable under this section.

A, intending to murder Z, purchases poison and mixes the same with food. So long as such food remains in his own keeping he is not within the section, but is so if he places it on Z's table, or delivers it to a servant to be placed thereon.

A digs a pit in his garden, with intent that Z shall fall in and be thereby killed. A is within the section.

[**Note.**—The test, whether the attempt is complete or not, will be, "has the offender completed his own portion towards the commission of the offence?" If he has, he will be within the section.]

203. *What is the punishment of an attempt to commit culpable homicide not amounting to murder?*

Three years imprisonment (*maximum*), or fine, or both.

If hurt be thereby caused, seven years imprisonment (*maximum*), or fine, or both. s.308.

204. *What is the punishment of an attempt to commit suicide?*

Simple imprisonment for one year (*maximum*), and fine. s.309.

Some act must be done towards the commission of the offence.

205. *What is a 'Thug' ?*

Any person *habitually associated with any other or others,* for the purpose of *robbery or child stealing accompanied with murder.* s.310.

206. *What is the punishment of 'Thuggee' ?*

Transportation for life, and fine. s.311.

OF THE CAUSING OF MISCARRIAGE, ETC.

207. *What is the punishment of wilfully causing miscarriage ?*

Unless such miscarriage be caused in good faith for the purpose of saving the life of the woman,—three years imprisonment (*maximum*), or fine, or both; or if the woman be quick with child,—seven years imprisonment (*maximum*), and fine. s.312.

A woman who causes herself to miscarry is within this section. *Ibid.*

If miscarriage be caused *without the consent of the woman,* then, *whether she be quick with child or not,* the offender is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.313.

If the woman's death result from any act done to cause a miscarriage, then the person doing such act (though he may not have known that such act was likely to cause death) is punishable with 10 years imprisonment (*maximum*), and fine. If such act was done without the woman's

consent, the punishment may be transportation for life. s.314.

208. *What is the punishment of an act done before the birth of any child (not being in good faith for the purpose of saving the life of the mother) with intent to prevent such child being born alive or to cause it to die after birth?*

Ten years imprisonment (*maximum*), or fine, or both. s.315.

209. *What is the punishment of an act (done under such circumstances that if the death of a grown person were thereby caused, such act would amount to culpable homicide) causing the death of an unborn child?*

Ten years imprisonment (*maximum*), and fine. s.316.

Illustration.—A makes a savage attack on Z, a pregnant woman. If Z died in consequence A would be guilty of culpable homicide. Z, however, does not die, but her unborn child does. A is within this section.

210. *What is the punishment of deserting a child under twelve years old?*

Seven years imprisonment (*maximum*), or fine, or both (s.317). This section is restricted to the *father or mother, and any person having the care* of a child.

[**Note.**—A stranger would, and either of the above might, according to the result, be tried under the earlier sections for murder or culpable homicide, or attempt to commit murder or culpable homicide.]

211. *What is the punishment of concealing or endeavouring to conceal the birth of a child? Is every such concealment punishable?*

Two years imprisonment (*maximum*), or fine, or both.

(s.318). To bring the case within the section the concealment must be "*by secretly burying or otherwise disposing of the dead body of a child,*" a mere denial or verbal concealment not amounting to the offence.

OF HURT.

212. *When is a person said to cause hurt ?*

When he causes to any person bodily pain, disease, or infirmity. s.319.

213. *What kinds of hurt are designated as 'grievous' ?*

1st. Emasculation.
2nd. Permanent privation of the sight of either eye.
3rd. Permanent privation of the hearing of either ear.
4th. Privation of any member or joint.
5th. Permanent impairing of the powers of any member or joint.
6th. Permanent disfiguration of the head or face.
7th. Fracture or dislocation of a bone or tooth.
8th. Any hurt which endangers life or which causes the sufferer to be, during the space of 20 days, in severe bodily pain, or unable to follow his ordinary pursuits. s.320.

214. *When is a person said 'voluntarily to cause hurt' ?*

When he does any act with the intention of thereby causing, or with the knowledge that he is likely thereby to cause, hurt to any person, and does thereby cause hurt to any person (not necessarily *the same* person). s.321.

215. *When is a person said 'voluntarily to cause* grievous hurt' ?

Only when he both intends or knows himself to be

likely to cause grievous hurt, and actually does cause grievous hurt (whether the grievous hurt actually caused be of the kind intended, or not). s.322.

216. *What is the punishment of voluntarily causing (1) hurt, (2) grievous hurt?*

Apart from special circumstances, and subject to the exception (as to grave and sudden provocation) to be hereafter noticed, voluntarily causing 'hurt' is punishable with one year's imprisonment (*maximum*), or Rs.1000 fine (*maximum*), or both. s.323. Voluntarily causing 'grievous hurt' under like circumstances,—with seven years imprisonment (*maximum*), and fine. s.325.

Voluntarily causing hurt by means of either of the following, viz. :—any instrument for shooting, stabbing or cutting, or any instrument which, used as a weapon of offence, is likely to cause death,—fire or any heated substance,—poison or any corrosive or deleterious substance,—any explosive substance,—or any animal,—is punishable with three years imprisonment (*maximum*), or fine, or both. s.324. Voluntarily causing *grievous* hurt by like means with ten years imprisonment (*maximum*), and fine. s.326.

The operation of the four last cited sections is expressly excluded in cases where hurt is caused on grave and sudden provocation, the offender neither intending nor knowing himself to be likely to cause hurt to any person other than the person who gave the provocation, in which case he is only punishable with one month's imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.334. *Grievous* hurt caused under the like circumstances, is punishable with four years imprisonment (*maximum*), or Rs. 2000 fine (*maximum*), or both. s.335.

[**Note.**—This is the only case in the Code in which the term of four years is fixed as a maximum punishment.]

Proviso.—The right to plead grave and sudden provocation under these sections is subject to the same provisos as in a case of culpable homicide. (See s.300, Quest. 197.)

Voluntarily causing hurt "for the purpose of extorting from the sufferer or any person interested in the sufferer any property or valuable security, or of constraining the sufferer or any person interested in such sufferer to do any thing which is illegal or which may facilitate the commission of an offence," is punishable with ten years imprisonment (*maximum*), and fine. s.327. Voluntarily causing *grievous* hurt for a like purpose is punishable with transportation for life or ten years imprisonment (*maximum*), and fine. s.329.

(For s.328, see Quest. 217.)

Voluntarily causing hurt "for the purpose of extorting from the sufferer, or any person interested in the sufferer, any confession or information which may lead to the detection of an offence or misconduct, or for the purpose of constraining the sufferer or any person interested in the sufferer to restore or cause the restoration of any property or valuable security, or to satisfy any claim or demand, or to give information which may lead to the restoration of any property or valuable security" is punishable with seven years imprisonment (*maximum*), and fine. s.330. Voluntarily causing *grievous* hurt for a like purpose is punishable with ten years imprisonment (*maximum*), and fine. s.331.

(For meaning of offence in ss.327—331, see Quest. 34, note.)

Voluntarily causing hurt to a public servant in the discharge of his duty, with intent to deter him or any other public servant from discharging his duty, or in consequence of anything done or attempted to be done by such public servant in the discharge of his duty, is punishable with

three years imprisonment (*maximum*), or fine, or both. (s.332). Voluntarily causing *grievous* hurt under the like circumstances,—with ten years imprisonment (*maximum*), and fine. s.333.

217. *What is the punishment of administering poison, or any stupefying, intoxicating, or unwholesome drug, with intent to cause hurt, or to commit or facilitate the commission of an offence?*

Ten years imprisonment (*maximum*), and fine. s.328.

(For meaning of offence in this section, see Quest. 34, note.)

[**Note.**—There is a singular inconsistency between this section and s.324 (Quest 216). By s.324, the actual causing of hurt by means of (*inter alia*) "poison, or any substance which it is deleterious to the human body to inhale, to swallow, or to receive into the blood," is punishable with a maximum term of three years imprisonment and fine. By this section (328), the administration of anything 'intoxicating' or 'unwholesome' with intent to cause hurt (even though no hurt be actually caused), may be punished with imprisonment which may extend to *ten* years, and fine.]

218. *What is the punishment of an act done so* rashly *or* negligently *as to endanger the personal safety of others?*

Three months imprisonment (*maximum*), or Rs. 250 fine, or both. s.336.

If by such act hurt be actually caused,—six months imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.337. If *grievous* hurt,—two years imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.338.

WRONGFUL RESTRAINT.

219. *When is a person said wrongfully to restrain another?*

When he voluntarily obstructs that other so as to prevent him from proceeding in any direction in which he has a right to proceed. s.339.

Exception.—The obstruction of a private way over land or water which a person in good faith believes himself to have a right to obstruct, is not an offence within the meaning of this section. *Ibid.*

Illustration.—A threatens to set a dog at Z, if Z goes along a certain path, along which he has a right to go. A wrongfully restrains Z.

220. *When is a person said wrongfully to confine another?*

When he wrongfully restrains that other in such a manner as to prevent him from proceeding beyond certain circumscribing limits. s.340.

[**Note.**—The restraint may (as in the former case) be either physical or moral.]

Illustration.—A tells Z that he will fire at him if he attempts to leave a certain building. A wrongfully confines Z, though the doors may be open.

221. *What is the punishment of wrongfully restraining any person?*

Simple imprisonment for one month (*maximum*), or Rs. 500 fine, or both. s.341.

222. *What is the punishment of wrongfully confining any person?*

1. Apart from circumstances of aggravation,—one year's imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.342.

2. If the confinement be for three days or more,—two years imprisonment (*maximum*), or fine, or both. s.343.
3. If for ten days or more,—three years imprisonment (*maximum*), and fine. s.344.
4. Keeping any person in wrongful confinement *with the knowledge that a writ for the liberation of that person has been duly issued,*—is punishable with two years imprisonment (*maximum*), *in addition to any other term of imprisonment to which the offender may be liable under any other section of this Chapter.* s.345.
5. Wrongfully confining any person in such manner *as to indicate an intention that his confinement or place of confinement may not be known to or discovered by any person interested in the person so confined, or any public servant,*—is punishable with two years imprisonment (*maximum*), *in addition* to any other punishment to which the offender may be liable for such wrongful confinement. s.346.
6. Wrongfully confining any person for the purpose of extorting from him, or any person interested in him, any property or valuable security, or of constraining the person confined or any person interested in him to do anything illegal or to give any information which may facilitate the commission of an offence,—is punishable with three years imprisonment (*maximum*), and fine. s.347.
7. Wrongfully confining any person for the purpose of extorting from him or any person interested in him any confession or information which may lead to the detection of an offence, or the restoration of any property or valuable security or the satisfaction of any claim or demand,—is punishable with three years imprisonment (*maximum*), and fine. s.348.

(For meaning of offence in the two last sections, see Quest. 34, note.)

CRIMINAL FORCE.

223. *When is a person said to use* force *to another?*

"When he causes motion, change of motion or cessation of motion to that other, or causes to any substance such motion, change of motion, or cessation of motion, as brings that substance into contact with any part of that other's body, or with anything which that other is wearing or carrying, or with anything so situated that such contact affects that other's sense of feeling,"—*provided* that he does so in either of the three ways following, viz.:—

1. By his own bodily power.

2. By disposing any substance in such a manner that the motion or change or cessation of motion takes place without any further act on his part, or on the part of any other person.

3. By inducing any animal to move, to change its motion, or to cease to move. s.349.

224. *When is a person said to use 'criminal force' to any person?*

When he intentionally uses force to any person, without that person's consent, *in order to the committing of any offence,* or intending thereby to cause, or *knowing it to be likely that he will thereby cause to such person injury, fear or annoyance.* s.350.

Illustrations.—Z is sitting in a moored boat on a river. A unfastens the moorings, and lets the boat drift down the stream, thus intentionally causing motion to Z.

Z is riding in a chariot. A lashes the horses, thus causing change of motion to Z.

Z is riding in a palanquin. A seizes the pole and thereby stops the palanquin, thus causing cessation of motion to Z.

A pushes against Z; thus by his own bodily power bringing his own person into contact with Z.

A throws a stone at Z, or into water in such manner that such water may splash against Z's person or clothes.

A pulls up the veil of Z, a woman.

A pours boiling water into a bath in which Z is bathing.

A incites a dog to spring at Z.

A has, in each of the cases stated, used force to Z. If A has *intentionally* used such force, without Z's consent, in order to the committing of an offence, or intending or knowing it to be likely that he will thereby cause injury, fear, or annoyance to Z, he has used *criminal force* to Z.

225. *When is a person said to 'commit an assault'?*

When he makes any gesture, or any preparation, intending or knowing it to be likely that such gesture or preparation will cause any person present to apprehend that he is about to use criminal force to such person. *Ibid.*

Explanation.—Mere words do not amount to an assault. But the words which a person uses may give to his gestures or preparations such a meaning as may make those gestures or preparations amount to an assault. s.351.

Illustrations.—A shakes his fist at Z, intending thereby to cause Z to believe that A is about to strike him. A has committed an assault.

A begins to unloose the muzzle of a ferocious dog, intending thereby to cause Z to believe that he is about to cause such dog to attack him. A has committed an assault.

A takes up a stick, saying to Z, "I will give you a beating." Neither the words nor the act would alone amount to an assault, but the act interpreted by the words is an assault.

226. *What is the punishment of 'assaulting' or 'using criminal force to' a person?*

Apart from special circumstances,—three months imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.352.

Grave and sudden provocation may be pleaded in answer to the charge, subject nevertheless to the same provisos as in a case of culpable homicide. (s.300. Quest. 197). In

such a case the maximum punishment is simple imprisonment for a month, or Rs. 200 fine, or both. s.358.

[**Note.**—It will be observed that an assault, which may be a mere gesture, is by this and the following sections placed on the same footing with the actual use of criminal force. As, however, there is no minimum limit of punishment, it will be easy for the magistrate to apportion his sentence to the greater or less gravity of the particular case.]

Assaulting or using criminal force to a public servant in the execution of his duty, or with intent to prevent the execution of his duty, or in consequence of anything done by him in the lawful discharge of his duty, is punishable with two years imprisonment, or fine, or both. s.353.

Assaulting or using criminal force to a woman, with intent to outrage her modesty (s.354),—with the like punishment.

[**Note.**—Upon a second conviction under this section, the offender is liable (under Act VI. of 1864) to be sentenced to whipping in addition to any other punishment.]

Assaulting or using criminal force to any person, with intent to dishonour that person, otherwise than on grave and sudden provocation (s.355),—with the like punishment.

Assaulting or using criminal force to any person, in attempting to commit theft on any property which such person is wearing or carrying (s.356),—with the like punishment.

Assaulting or using criminal force to any person, in attempting wrongfully to confine that person, is punishable with one year's imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.357.

(For s.358 see above.)

OF KIDNAPPING, ABDUCTION, ETC.

227. *What are the two kinds of kidnapping?*

Kidnapping from British India, and kidnapping from lawful guardianship. s.359.

228. *When is a person said to 'kidnap from British India'?*

When he conveys any person beyond the limits of British India without the consent of that person, or of some one legally authorised to consent on his behalf. s.360.

(As to what amounts to a valid consent, see s.90, Quest. 72.)

229. *When is a man said to 'kidnap from lawful guardianship'?*

When he takes or entices any minor under fourteen if a male, or under sixteen if a female, or any person of unsound mind, out of the keeping of his or her lawful guardian, without the consent of such guardian. s.361.

Explanation.—The words "lawful guardian" in this section include any person lawfully entrusted with the care or custody of such minor, &c. *Ibid.*

Exception.—This section does not extend to the act of any person in good faith believing himself to be the father of an illegitimate child, or to be entitled to the lawful custody of such child, unless such act is committed for an immoral or unlawful purpose. *Ibid.*

230. *When is a person said to 'abduct' another?*

When he by force compels, or by deceit induces, that other to go from any place. s.362.

231. *What is the punishment of 'kidnapping'?*

Kidnapping from British India and kidnapping from lawful guardianship are placed on the same footing, and apart from special circumstances, are punishable with seven years imprisonment (*maximum*), and fine. s.363.

Kidnapping or abducting any person in order that such person may be, or be put in danger of being, murdered,—is punishable with transportation for life, or rigorous imprisonment for ten years (*maximum*), and fine. s.364.

Kidnapping or abducting any person with intent to cause such person to be secretly and wrongfully confined,—with seven years imprisonment (*maximum*), and fine. s.365.

Kidnapping or abducting a woman with intent that she may be compelled to marry any person against her will, or be either forced or seduced to illicit intercourse,—with ten years imprisonment (*maximum*), and fine. s.366.

Kidnapping or abducting any person in order that such person may be in danger of being subjected to grievous hurt, slavery, or unnatural lust,—with the like punishment. s.367.

Kidnapping or abducting a child under the age of ten years with intent to take dishonestly any moveable property from the person of such child,—with seven years imprisonment (*maximum*), and fine. s.369.

Wrongfully concealing or confining a person known to have been kidnapped or abducted, is punishable in the same manner as if the offender had himself kidnapped or abducted such person with the same intent with which he conceals such person. s.368.

[**Note.**—It will be observed that in the six preceding sections the word 'abduct' is used as an alternative for 'kidnap'. So framed, the sections in question will cover many cases in which it would be difficult or impossible to prove the more active offence of kidnapping. Abduction, apart from particular intent, is not *per se* an offence, though acts amounting to abduction will in general be punishable under other heads.]

232. *What is the punishment of buying or selling a person as a slave? and to what kindred acts does such punishment extend?*

Punishment—seven years imprisonment (***maximum***), and fine. Extended to importing, exporting, removing, buying, selling, disposing of, accepting, receiving, or detaining against his will, any person as a slave. s.370.

Habitual dealing in slaves is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.371.

233. *What is the punishment of selling, letting to hire, or otherwise disposing of a minor under sixteen for the purpose of prostitution or other unlawful and immoral purpose?*

Ten years imprisonment (*maximum*), and fine. s.372.

Buying, hiring, or otherwise obtaining possession of such a minor for a like purpose, is punishable in like manner. s.373.

[**Note.**—To bring a given case within this section, the purpose, being other than prostitution, must be *unlawful* as well as immoral.]

234. *What is the punishment of unlawfully compelling a person to labour against his will?*

One year's imprisonment (*maximum*), or fine, or both. s.374.

OF RAPE.

235. *When is a man said to commit 'rape'?*

When (save in the case below excepted) he has sexual intercourse with a woman—

1. Against her will.

2. Without her consent.
3. With her consent, obtained by fear of death, or hurt.
4. With her consent, obtained (to his knowledge) by a mistaken belief on her part that he is her husband.
5. With or without consent, when she is under ten years of age. s.375.

Explanation.—Penetration constitutes the sexual intercourse necessary to the offence. *Ibid.*

Exception.—Sexual intercourse by a man with his own wife, the wife not being under ten years of age, is not rape. *Ibid.*

236. *What is the punishment of rape?*

Transportation for life, or ten years imprisonment (*maximum*), and fine. s.376.

237. *What is the punishment of an unnatural offence?*

Transportation for life, or ten years imprisonment (*maximum*), and fine. s.377.

[**Note.**—Upon a second conviction under either of the two foregoing sections the offender is liable (by Act VI. of 1864) to be sentenced to whipping as an additional punishment.]

CHAPTER XVII.

OF OFFENCES AGAINST PROPERTY.

OF THEFT.

[**Note.**—It should be borne in mind that (by s.75) whoever, having been convicted of an offence punishable under this Chapter or Chap. XII. with imprisonment of either description for three years or upwards, shall be guilty of any offence punishable under either of such Chapters with imprisonment of either description for three years or upwards, shall be subject for every such subsequent offence to transportation for life or to double the amount of punishment to which he would otherwise have been liable for the same; provided that he shall not in any case be liable to imprisonment for more than ten years.]

238. *When is a person said to commit 'theft'?*

"Whoever, intending to take dishonestly any moveable property out of the possession of any person without that person's consent, moves that property in order to such taking, is said to commit theft." s.378.

[**Note.**—Several of the terms employed in this definition have already received authentic interpretation. Thus, for the meaning of "moveable property," see s.22, (Quest. 20); "dishonestly," s.24, (Quest. 22); "possession," s.27, (Quest. 25); and "consent," s.90, (Quest. 72).]

Explanation 1.—Anything attached to the earth, not being "moveable property," is not the subject of theft, but may become so as soon as it is severed from the earth.

Explanation. 2.—A moving effected by the same act which effects the severance may be a theft.

Explanation 3.—A person is said to cause a thing to move by removing an obstacle which prevented it from

moving, or by separating it from any other thing, as well as by actually moving it.

Explanation 4.—A person who causes an animal to move, is said to move that animal, and everything thereby set in motion.

Explanation 5.—"Consent" may be either express or implied, and may be given either by the person in possession, or any person having authority express or implied. *Ibid.*

Illustrations.—A cuts down a tree on Z's ground, with intent dishonestly to take such tree out of Z's possession. As soon as A has severed the tree, he has committed theft.

A, intending to steal Z's dog, puts a bait in his pocket, and thus induces the dog to follow him. As soon as the dog begins to do so, A has committed theft.

A meets a bullock carrying a box of treasure. He drives the bullock in a certain direction, in order that he may dishonestly take the treasure. As soon as the bullock begins to move, A has committed theft. If, however, the bullock has strayed, A's offence would probably amount only to criminal misappropriation. (see s.403, Quest. 247).

A being Z's servant, entrusted with the care of Z's plate, dishonestly runs away therewith, without Z's consent. Here A's possession being his master's possession, A has committed theft.

Z, going on a journey, entrusts his plate to A to take charge of until his return. A carries the plate to a goldsmith and sells it. Here, as the plate was in A's own possession, he has committed criminal breach of trust, but not theft. (See s.405, Quest. 249).

A finds a ring lying on the high road, not in the possession of any person. A by taking it does not commit theft, though he may commit criminal misappropriation. (See s.403, Quest. 247).

A finds a ring belonging to Z, on a table in the house which Z occupies. Here the ring is in Z's possession, and if A dishonestly removes it, he commits theft.

In the case last mentioned, A, instead of at once appropriating the ring, hides it, with the intention of appropriating it when the loss is forgotten. Here A, at the time of first moving the ring, commits theft. (If, however, instead of moving the ring, A, with like intent, merely covers it with a book or cloth, he is not within the definition).

A delivers his watch to Z, a jeweller, to be regulated. He afterwards (not owing Z any debt for which Z might lawfully detain the watch) enters the shop, takes the watch by force out of Z's hand, and carries it away. Here A, not having done the act *dishonestly*, has not committed theft, though he may have committed criminal trespass and assault.

If, however, in the case last stated, A owes Z money for repairing the watch, and Z lawfully retains it as a security for the debt, of

which A desires to deprive him, the forcibly dispossessing Z of the watch (although A's own property) may amount to theft, as being done *dishonestly*. In like manner, if A has pawned the watch to Z as security for a loan.

A takes an article belonging to Z out of Z's possession without Z's consent, intending to keep it till Z offers a reward for its restoration. Here the taking being dishonest, amounts to theft.

A, being on friendly terms with Z, goes into Z's library in his absence and removes a book, intending to return it. The taking, not being dishonest, is not theft.

A asks charity from Z's wife. She gives him money, food and clothes, which he knows to belong to Z. If A believes that she has authority to give such articles, he has not taken the articles dishonestly, and has not committed theft.

A is the paramour of Z's wife, and receives from her articles belonging to Z which he knows she has not authority to give. A has committed theft.

A in good faith, believing property belonging to Z to belong to himself, A, takes such property out of Z's possession. Here the taking not being dishonest, is not theft.

239. *What is the punishment of theft?*

Apart from circumstances of aggravation,—three years imprisonment (*maximum*), or fine, or both. s.379.

Theft in a building, tent, or vessel, used as a human dwelling or for the custody of property,—is punishable with seven years imprisonment (*maximum*), and fine. s.380.

Theft by a clerk or servant of any property of his employer,—is punishable in like manner. s.381.

Theft after preparation made for causing death, hurt, or restraint, or fear of death, hurt, or restraint, to any person, in order to the committing of such theft, or escape afterwards, or the retaining of property taken by such theft,—is punishable with *rigorous* imprisonment for ten years (*maximum*), and fine. s.382.

Illustrations.—A commits theft, having a loaded pistol on his person, to use in case of meeting resistance. He is within this section. (It would seem that the use of an unloaded pistol would equally bring him within the section, as designed to cause fear of death or hurt.)

A picks Z's pocket, having posted companions near at hand, that they may restrain Z in case Z should detect and try to arrest him. A is within this section.

[**Note.**—By Act VI. of 1864, s.2, whoever commits either of the foregoing offences may on a first conviction be punished with whipping in lieu of any other punishment to which he may for such offence be liable under the Penal Code, and by s.3, upon a second conviction of the same offence, may be punished with whipping *in lieu of or in addition to* any other punishment to which he may be liable under the Penal Code.]

OF EXTORTION.

240. *When is a person said to commit 'extortion'?*

When he "intentionally puts any person in fear of any injury to that person *or any other*, and thereby dishonestly induces the person so put in fear to deliver to any person any property or valuable security, or anything signed or sealed which may be converted into a valuable security." s.383.

(For the meaning of 'injury,' see s.44, Quest. 37; 'valuable security,' s.30, Quest. 28.)

[**Note.**—Extortion differs from Theft in that in Theft the property is taken without the consent of the owner; in Extortion *with* consent, but such consent is obtained by putting the owner of the property in fear of hurt, either to himself or some other person. If such fear be fear of *instant* death, *instant* hurt, or *instant* wrongful restraint, the offence will amount to Robbery. See s.390, Quest. 242.]

Illustrations.—A threatens to publish a defamatory libel concerning Z, unless Z gives him money. Z does so in consequence.

A, by a threat that he will keep Z's child in wrongful confinement, induces Z to sign and deliver to him a promissory note binding Z to pay certain monies.

A, by putting Z in fear of grievous hurt (to be inflicted at some future time), dishonestly induces Z to sign a blank paper and deliver it to A. The paper so signed may be converted into a valuable security.

A has in either of the cases stated committed extortion.

241. *What is the punishment of extortion?*

Apart from circumstances of aggravation,—three years imprisonment (*maximum*), or fine, or both. s.384.

If the extortion be committed by putting any person in fear of *death* or *grievous hurt* to himself or any other,—ten years imprisonment and fine. s.386.

If the extortion be committed by putting any person in

fear of an accusation of having committed or attempted to commit an offence punishable with death, transportation for life, or ten years imprisonment, or of having attempted to induce any other person to commit such offence,—such extortion is punishable with ten years imprisonment (*maximum*), and fine; or if the offence be one punishable under s.377, (Quest. 237), then with transportation for life. s.388.

The mere putting or attempting to put any person in fear of such accusation as last mentioned in order to the committing of extortion (though such attempt at extortion fail),—is punishable in like manner. s 389.

(For meaning of 'offence' in the two last-quoted sections, see Quest. 34, note.)

[**Note.**—In any case punishable under ss. 388, 389, the offence may (under Act VI. of 1864) be punished with whipping, in lieu of other punishment for a first offence, and upon a second conviction, either in lieu of, or in addition to, other punishment.]

Putting or attempting to put any person (in order to the committing of extortion) in fear of any injury,—is punishable with two years imprisonment (*maximum*), or fine, or both. s.385.

Putting or attempting to put any person, for the like purpose, in fear of death or grievous hurt to himself or any other,—is punishable with seven years imprisonment (*maxi-*
and fine. s.387.

[**Note.**—Threatening a person with any injury to person, reputation, or property, apart from the special motive of Extortion, is punishable under the head of Criminal Intimidation. s.503.]

OF ROBBERY AND DACOITY.

In all robbery there is either theft *or* extortion." s.390.

242. *When is* theft '*robbery*'?

When, in order to the committing, or in committing the

theft, or in carrying or attempting to carry away property obtained by the theft, the offender voluntarily causes or attempts to cause to any person death, hurt, or wrongful restraint, or fear of *instant* death, *instant* hurt, or *instant* wrongful restraint. *Ibid.*

Illustration.—A holds Z down, and fraudulently rifles his pockets. Here A, in committing theft, has caused wrongful restraint to Z, and is thereby guilty of robbery.

243. *When is* extortion '*robbery*'?

When the offender, *being in the presence of the person put in fear,* commits the extortion by putting that person in fear of *instant* death, *instant* hurt, or *instant* wrongful restraint to himself or some other. s.390.

Illustrations.— A meets Z on the high road, and producing a pistol, demands Z's purse, which Z, being thereby put in fear of instant hurt, delivers. A has committed extortion amounting to robbery. Similarly if A threatened then and there to shoot Z's child, and thereby induced Z to deliver the purse.

A obtains property from Z by saying "your child is in the hands of my gang, and will be put to death unless you give me Rs. 10,000." This is extortion, but not robbery, unless Z was thereby led to apprehend the *instant* death of his child.

[**Note.**—Extortion by means of a threatening letter, or the like, is not robbery, the offender not being in the presence of the person put in fear.]

244. *When is a person said to commit* '*dacoity*'?

"When *five or more* persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting, or aiding, is said to commit 'dacoity.'" s.391.

245. *What is the punishment of robbery?*

Apart from circumstances of aggravation,—*rigorous* imprisonment for ten years (*maximum*), and fine. If the

robbery be committed on the highway between sunset and sunrise, the imprisonment may be extended to fourteen years. s.392.

The mere attempt to commit robbery is punishable with rigorous imprisonment for seven years (*maximum*), and fine. s.393.

If any person, in committing or attempting to commit robbery, voluntarily causes hurt, such person *and any other person jointly concerned in committing or attempting to commit such robbery*, shall be punished with transportation for life, or rigorous imprisonment for ten years (*maximum*), and fine. s.394.

[**Note.**—Upon a *second* conviction under either of the three foregoing sections, or for dacoity, (s.390) the offender is punishable (under Act VI. of 1864) with whipping as an additional punishment.]

246. *What is the punishment of 'd*

Apart from special circumstances, transportation for life, or rigorous imprisonment for ten years (*maximum*), and fine. s.395.

[See Note to last Question.]

If in the commission of dacoity murder also be committed, *each person concerned in such dacoity* is punishable with death, transportation for life, or rigorous imprisonment for ten years (*maximum*), and fine. s.396.

If at the time of committing robbery or dacoity, the offender uses any deadly weapon or causes grievous hurt, or attempts to cause death or grievous hurt (s.397), or if at the time of attempting to commit robbery or dacoity, the offender is armed with any deadly weapon (s.398), the imprisonment with which such offender shall be punished, *shall not be less* than seven years.

[**Note.**—These are the only two sections in the Code in which a minimum term of imprisonment is specified.]

Making preparation to commit dacoity,—is punishable

with rigorous imprisonment for ten years (*maximum*), and fine. s.399.

Belonging to a gang of habitual dacoits,—is punishable in like manner. s.400.

Belonging to any gang of persons associated for the purpose of habitually committing theft or robbery (and not being a gang of Thugs or Dacoits),—is punishable with rigorous imprisonment for seven years (*maximum*), and fine. s.401.

Being one of five or more persons assembled for the purpose of committing dacoity (though no act in furtherance of such purpose be actually done),—is punishable in like manner. s.402.

OF CRIMINAL MISAPPROPRIATION.

247. *What is the punishment of dishonest misappropriation of property?*

Two years imprisonment (*maximum*), or fine, or both. s.403.

[**Note.**—The Code does not define what constitutes dishonest misappropriation. The section commences "Whoever *dishonestly misappropriates or converts to his own use any moveable property, shall be punished, &c.*" It will therefore be for the Judge in each particular case, to decide, as a matter of fact, whether the act charged against the prisoner is such an act as above described. The essential difference of Criminal Misappropriation, as distinguished from Theft, is that in the former there is no wrongful dispossession, but the offender being lawfully in possession of the property, makes a dishonest use of such possession. The explanations and illustrations will further elucidate the nature of the offence.]

Illustrations.—A takes property belonging to Z out of Z's possession, in good faith believing that such property is his own. So far he has committed no offence, but if, after discovering his mistake, he dishonestly converts such property to his own use, he is punishable under this section.

Z lends A a book. A's possession of such book is lawful. But if A sells such book for his own benefit, he is guilty of an offence under this section.

A and B are joint owners of a horse. A has a right to use such horse, but if he sells it and appropriates the whole proceeds to his own use, he is guilty of an offence under this section.

Explanation 1.—"A dishonest misappropriation for a time only is a misappropriation within the meaning of this section." *Ibid.*

Illustration.—A finds a Government Promissory Note belonging to Z, bearing a blank endorsement. A knowing that the note belongs to Z, pledges it with a banker as security for a loan, intending at a future time to restore it. A has committed an offence under this section.

Explanation 2.—"A person who finds property not in the possession of any other person, and takes such property for the purpose of protecting it for, or of restoring it to, the owner, does not take or misappropriate it dishonestly, and is not guilty of an offence: but he is guilty of the offence above defined if he appropriates it to his own use when he knows or has means of discovering the owner, or before he has used reasonable means to discover and give notice to the owner, and has kept the property a reasonable time to enable the owner to claim it.

What are reasonable means or what is a reasonable time in such a case is a question of fact.

It is not necessary that the finder should know who is the owner of the property, or that any particular person is the owner of it: it is sufficient if, at the time of appropriating it, he does not believe it to be his own property, or in good faith believe that the real owner cannot be found." *Ibid.*

Illustrations.—A finds a Rupee on the high road, and not knowing to whom it belongs, appropriates it. He has committed no offence.

A finds a letter on the high road, containing a bank note, the address of the letter showing him to whom such note belongs. If he appropriates the note he is guilty of an offence under this section.

A finds a cheque payable to bearer. He does not know who has lost the cheque, but knows that he can probably ascertain by enquiry of the drawer. If he appropriates the note, he is guilty of an offence under this section.

A sees Z drop his purse. A picks up the purse intending to restore it, but afterwards appropriates it to his own use. A has committed an offence under this section.

A finds a purse, not knowing to whom it belongs, but afterwards discovers that it belongs to Z. A appropriates it to his own use. A is guilty of an offence under this section.

A finds a valuable ring, owner unknown. He sells it immediately, without endeavouring to discover the owner. He is guilty of an offence under this section.

248. *What aggravated form of dishonest misappropriation is noticed by the Code, and how is it punishable?*

If the misappropriated property, to the knowledge of the offender, was in the possession of a deceased person at the time of his decease, and has not since been in the lawful possession of any other person, the dishonest misappropriation of such property is punishable with three years imprisonment (*maximum*), and fine; or if the offender be a clerk or servant of the deceased, the imprisonment may extend to seven years. s.401.

[**Note.**—The punishment is in this case made more severe, on account of the unprotected position of the property in question, and the proportionately smaller likelihood of detection. If the offender, in such a case, has taken a dishonest advantage of his fiduciary position as a clerk or servant, the punishment is (as in the case of theft by a clerk or servant) still further increased.

It is worthy of notice, that, apart from this section (which deals only with property in the possession of a *deceased* person), criminal misappropriation *by a clerk or servant*, is not specified as an aggravated form of the offence. The probable reason for the omission is, that criminal misappropriation by such a person would, in the case of property having a living owner, almost necessarily amount to theft, and be punishable accordingly. Not so in the case of a deceased owner, as the property cannot be said to be in his possession.]

249. *When is a person said to commit 'criminal breach of trust'?*

When, "*being in any manner entrusted with property, or with any dominion over property,*" he "dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property, in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of

such trust, or wilfully suffers any other person so to do." s.405.

Illustrations.—A, being executor of the will of Z, instead of dividing the effects according to law, dishonestly appropriates them to his own use. A has committed criminal breach of trust.

Z, going on a journey, entrusts his goods to A for safe keeping during his absence. A sells such goods for his own benefit. A has committed criminal breach of trust.

A, residing in Calcutta, is agent for Z, residing at Delhi. Z remits a lakh of Rupees to A, to be invested in a particular manner. A employs the money in another manner. Whether A has committed criminal breach of trust or not, will depend on his motive:—viz., whether such investment was made *dishonestly*, for his own benefit, or with a bonâ fide belief of greater advantage to Z.

250. *What is the punishment of criminal breach of trust?*

Apart from circumstances of aggravation,—three years imprisonment (*maximum*), and fine. s.406.

If the property have been entrusted to the offender in the capacity of a carrier, wharfinger, or warehouse-keeper (s.407), clerk or servant (s.408),—seven years imprisonment (*maximum*), and fine.

If the property have been entrusted to the offender in the capacity of a public servant, banker, merchant, factor, broker, attorney, or agent,—transportation for life, or ten years imprisonment (*maximum*), and fine. s.409.

OF THE RECEIVING OF STOLEN PROPERTY.

251. *What is included under the term 'stolen property,' and how does it cease to be so?*

"Property the possession whereof has been transferred by theft, or by extortion, or by robbery, and property which has been criminally misappropriated, or in respect of which the offence of criminal breach of trust has been committed, is designated as stolen property.

But if such property subsequently comes into the possession of a person legally entitled to the possession thereof, it then ceases to be 'stolen property.'" s.410.

252. *What is the punishment of knowingly receiving or retaining stolen property?*

Apart from circumstances of aggravation,—three years imprisonment (*maximum*), or fine, or both. s.411.

[**Note.**—To establish the offence, it must be proved—
1. That the property was stolen property, as above defined.
2. The receiving or retaining by the accused.
3. That the accused had reason to believe that the property was stolen.]

If the receiver has reason to believe that the stolen property is the produce of a dacoity, or offered by a dacoit,—his punishment may be transportation for life, or rigorous imprisonment for ten years (*maximum*), and fine. s.412.

[**Note.**—Any offender under either of the two foregoing sections is likewise punishable (under Act VI. of 1864) with whipping, as an alternative punishment for a first offence, and either as an *alternative* or *additional* punishment upon a second conviction.]

Habitually receiving or dealing in stolen property—is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.413.

[**Note.**—A second offence under this section is (by Act VI. of 1864) punishable with whipping as an additional punishment.]

Wilfully assisting in concealing or disposing of stolen property—is punishable with three years imprisonment (*maximum*), or fine, or both. s.414.

OF CHEATING.

253. *When is a person said to 'cheat'?*

When, "by deceiving any person," he (1) fraudulently or dishonestly induces the person so deceived to deliver

any property to any person, or to consent that any person shall retain any property; or (2) intentionally induces the person so deceived to do or omit to do anything which he would not otherwise do or omit, and which act or omission causes or is likely to cause damage or harm to that person, in body, mind, reputation, or property. s.415.

Explanation.—A dishonest *concealment of facts* is a deception within the meaning of this section. *Ibid.*

[**Note.**—The definition specifies two possible effects or results of "cheating." The first, consisting in *dishonestly or fraudulently* inducing the person deceived to deliver up a consent to the retention of property, is the graver form of the offence, and is, by the first clause of s.420 (Quest. 255), punishable with a proportionately heavy punishment. The second, consisting of the intentionally inducing the person deceived to do or omit anything to his own hurt, in body, mind, reputation, or property, is more general. The framers of the Code have wisely avoided any possibility of quibble as to the particular mode of the deceit. Whoever, "by deceiving any person," produces either of the effects specified, will be within the definition.]

The following Illustrations exemplify a few of the possible forms of cheating.

A, by falsely pretending to be in the Civil Service, induces Z to let him have on credit goods for which he does not mean to

A, by putting a counterfeit mark on an article, causes Z to believe that such article was made by a celebrated manufacturer, and on that account to give a higher price for it.

A, by exhibiting to Z a false sample of an article, dishonestly induces him to order and pay for a quantity of such article.

A, by tendering in payment for an article a cheque on a bank where he has "no effects," dishonestly induces Z to deliver the article, intending not to pay for it.

A, by pledging as diamonds articles which he knows are not diamonds, dishonestly induces Z to lend him money.

A deceives Z into a belief that A means to repay any money Z may lend to him, and thereby dishonestly induces Z to lend him money, A not intending to repay it.

A untruly represents to Z that he will deliver to Z certain indigo, which he *does not intend to deliver*, and thereby dishonestly induces Z to advance money upon the faith of such delivery. (If A, *at the time of obtaining the money, intends to deliver the indigo*, but afterwards breaks his contract and does not deliver it, this is ground for a civil action, but is not "cheating.")

A untruly represents to Z that a large sum of money will be paid into the bank to his account on the following morning, and that he will then pay Z for certain goods, and Z, on the faith of such representations, gives him credit for the goods.

[**Note.**—The state of facts set out in the last Illustration would not, under English law, be punishable as a false pretence, as not being a false pretence of an *existing fact*. If, however, the pretence was, that the sum of money in question was already standing to A's account, this would be punishable.]

254. *When is a person said to 'cheat by personation'?*

When he cheats "by pretending to be some other person" (real or imaginary), "or by knowingly substituting one person for another, or representing that he or any other person is a person other than he or such other person really is." s.416.

[**Note.**—The following forms of personation are enumerated by Messrs. Morgan and Macpherson, in their treatise on the Code, as within the section.

"1. By pretending to be some other person:—as if A pretends to be a certain rich banker of the same name.

2. By taking a name not his own:—as if A pretends to be B, a person who is deceased.

3. By taking any title or addition to which he has not a right:—as if A takes the title of Rajah, having no right to that title.

4. By pretending to be of a country of which he is not: as if A, an East Indian, pretends to be an Affghan.

5. By pretending to be of a calling of which he is not:—as if A falsely pretends to be a clergyman.

6. By pretending to be of a family of which he is not;—as if A pretends to be a member of one of the Sovereign Houses of India.

7. By falsely pretending to hold or to have held any office real or imaginary.

8. By falsely pretending to be related by blood or marriage to any person, real or imaginary:—as if A falsely pretends to be married to B, an heiress.

9. By falsely pretending to be in the employ of any person, real or imaginary:—as if A falsely pretends to be the agent of a great commercial house in Europe, or to be the Vakeel of a native Prince, &c.

255. *What is the punishment of cheating?*

Apart from circumstances of aggravation,—one year's imprisonment (*maximum*), or fine, or both. s.417.

If by personation (s.419) or with knowledge that wrongful loss is likely to be thereby caused to a person whose

interest in the transaction the offender was legally bound to protect (s.418),—three years imprisonment (*maximum*), or fine, or both.

If the offender thereby "dishonestly induces the person deceived to deliver any property to any person" (see the first clause of the definition of cheating, Quest. 253), "or to make, alter, or destroy the whole or any part of a valuable security, or any thing which is signed or sealed, and which is capable of being converted into a valuable security,"—seven years imprisonment (*maximum*), and fine. s.420.

OF FRAUDULENT DEEDS AND DISPOSITIONS OF PROPERTY.

256. *What are the offences specified in the Code under the above head, and how are they punishable?*

1. Dishonestly or fraudulently removing, concealing or transferring property with intent to prevent the distribution of such property among creditors according to law. s.421.
2. Dishonestly or fraudulently preventing any debt or demand due to the offender or any other person from being made available according to law for payment of his debts or the debts of such other person. s.422.
3. Dishonestly or fraudulently executing or becoming a party to any instrument which purports to transfer or charge any property, and which contains any false statement as to the consideration for such transfer or charge, or as to the person or persons for whose benefit it is intended to operate. s.423.
4. Dishonestly or fraudulently concealing or removing any property of the offender or of any other person,

or assisting in the concealment or removal thereof, or dishonestly releasing any demand or claim to which the offender is entitled. s.424.

The limit of punishment is the same in either case, viz., two years imprisonment (*maximum*), or fine, or both.

OF MISCHIEF.

257. *When is a person said to commit 'mischief'?*

When he "with intent to cause, or knowing that he is likely to cause wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously." s.425.

Explanation 1.—"It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause or knows that he is likely to cause wrongful loss or damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2.—Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly." *Ibid.*

Illustrations.—A voluntarily burns a valuable security belonging to Z, intending to cause wrongful loss to Z.

A causes cattle to enter upon a field belonging to Z, knowing that he is likely thereby to cause damage to Z's crops.

A, knowing that his effects are about to be taken in execution in order to satisfy a debt due to him from Z, destroys such effects in order thereby to cause damage to Z.

A having insured a ship, causes same to be cast away, knowing that he will thereby cause wrongful loss to the underwriters.

A having joint property with Z in a horse, shoots such horse with intent thereby to cause wrongful loss to Z.

258. *What is the punishment of committing mischief?*

Apart from special circumstances,—three months imprisonment (*maximum*), or fine, or both. s.426.

If such mischief be committed by destroying, moving or rendering less useful any landmark fixed by authority of a public servant,—one year's imprisonment (*maximum*), or fine, or both. s.434.

If the loss or damage caused by such mischief amount to Rs. 50 or upwards (s.427), or if such mischief be committed by killing, maiming, or rendering useless any animal or animals of the value of Rs. 10 or upwards (s.428) :—

Two years imprisonment (*maximum*), or fine, or both.

If such mischief be committed—

—by killing, maiming, or rendering useless, any elephant, camel, horse, mule, buffalo, bull, cow, or ox, *of whatever value,* or any *other animal of the value of Rs.* 50 *or upwards* (s.429) :—*or*

—by doing any act known to be likely to cause diminution of the supply of water for agricultural, drinking, cleaning, or manufacturing purposes (s.430) :—*or*

—by doing any act known to be likely to render any public road or bridge, or navigable river or channel, impassable or less safe for travelling or conveying property (s.431) :—*or*

—by doing any act known to be likely to cause an inundation or an obstruction to any public drainage attended with injury or damage (s.432) :—*or*

—after having made preparation for causing to any person death, hurt, or wrongful restraint, or fear of death, hurt, or wrongful restraint (s.440) :—

Five years imprisonment (*maximum*), or fine, or both.

If such mischief be committed—

—by destroying, moving, or rendering less useful any light-house, buoy, or sea-mark (s.433):—*or*

—by fire, or any explosive circumstance, with intent to cause damage to the amount of Rs. 100 or upwards:—(s.435)—

Seven years imprisonment (*maximum*), and fine.

—If to any decked vessel, or to any vessel of twenty tons burden or upwards, with intent to destroy or render unsafe such vessel (s.437):—*or*

—by running any vessel aground or ashore, with intent to commit theft or misappropriation of property therein (s.439):—

Ten years imprisonment (*maximum*), and fine.

—If by fire, or any explosive substance, with intent to cause the destruction of any building used as a place of worship, human dwelling, or for the custody of property (s.436):—

Transportation for life, or ten years imprisonment (*maximum*), and fine.

The committing or *attempting to commit* by fire or any explosive substance, such mischief as described in s.437 (to a decked vessel or vessel of twenty tons burden), —the like punishment. s.438.

OF CRIMINAL TRESPASS.

259. *What is the definition of* criminal trespass, *and what are the several degrees of the offence?*

"Whoever enters into or upon property in the possession of another *with intent to commit an offence, or to intimidate, insult, or annoy any person in possession of such pro-*

perty; or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult, or annoy any such person, or with intent to commit an offence, is said to commit *criminal trespass,*" s.441.

[**Note.**—The special intents, one or other of which is necessary to make the trespass an offence, should be particularly noticed. It is not sufficient that the purpose of the trespasser be merely improper or immoral, *e.g.*, the prosecution of an intrigue with an unmarried female member of the householder's family. The trespass in such case might be sufficient ground for a civil suit, but would not come within this section. *Semble*, if in the case supposed, the woman was married, adultery with a married woman being an 'offence.'

For meaning of 'offence' in this section, see Quest. 34, note.]

"Whoever commits criminal trespass by entering into or remaining in any building, tent, or vessel used as a human dwelling, or any building used as a place of worship, or as a place for the custody of property, is said to commit *house-trespass.*" s.442. (The introduction of any part of the body is sufficient "entering" to constitute the offence). *Ibid.*

"Whoever commits house-trespass, having taken precautions to conceal such house-trespass from some person who has a right to exclude or eject the trespasser from the building, tent, or vessel which is the subject of the trespass, is said to commit *lurking house-trespass*" (s.443). If after sunset and before sunrise, *lurking house-trespass by night.* s.444.

260. *When does 'house-trespass' amount to* 'housebreaking'?

When the offender "effects his entrance into the house or any part of it in any of the six ways hereinafter described; or if, being in the house, or any part of it, for the purpose of committing an offence, or having committed

an offence therein, he quits the house or any part of it in any of such six ways," that is to say:—if he enters or quits—

1. Through any passage made in order to the committing of the house-trespass.

2. Through any passage not intended for human entrance, or to which he has obtained access by scaling or climbing over any wall or building.

3. Through any passage which he or any abettor has opened in order to the committing of the house-trespass, by any means by which that passage was not intended by the occupier of the house to be opened.

4. By opening any lock.

5. By using criminal force or committing an assault, or by threatening any person with assault.

6. By any passage which he knows to have been fastened against such entrance or departure, and to have been unfastened by himself or by an abettor. s.445.

Explanation.—"Any outhouse or building occupied with a house, and between which and such house there is an immediate internal communication, is part of the house within the meaning of this section." *Ibid.*

(For meaning of "offence" in this section, see Quest. 34, note.)

Illustrations.—A commits house-trespass by making a hole through the wall of Z's house, and putting his hand through the aperture.

A commits house-trespass by creeping into a ship at a port-hole between decks,—or into a house, through a window.

A commits house-trespass by entering a house through a door which was fastened, and which he opens.

A commits house-trespass by entering Z's house, having opened the door by means of the proper key, which Z has lost and A has found.

Z is standing in his open doorway. A knocks him down, (or compels him by threat of assault to stand aside,) and commits house-trespass by entering the house.

A has, in either of the above cases, committed housebreaking.

261. *When is a person said to commit 'housebreaking by night'?*

When he commits such housebreaking between sunset and sunrise. s.446.

262. *What is the punishment of criminal trespass?*

Apart from circumstances of aggravation,—three months imprisonment (*maximum*), or Rs. 500 fine (*maximum*), or both. s.447.

263. *What is the punishment of house-trespass?*

Apart from special circumstances,—one year's imprisonment (*maximum*), or Rs. 1000 fine (*maximum*), or both. s.448.

If the house trespass be committed in order to the committing of any offence punishable with imprisonment,—two years imprisonment (*maximum*), and fine; or if such offence be *theft*,—seven years imprisonment (*maximum*), and fine. s.451.

If the house-trespass be committed after preparation made for causing hurt to, assaulting, or wrongfully restraining any person, or for putting any person in fear of hurt, assault, or wrongful restraint,—seven years imprisonment (*maximum*), and fine. s.452.

[**Note.**—Hurt need not actually be caused. Compare s.382, Quest. 239.]

If the house-trespass be committed in order to the committing of any offence punishable with transportation for life,—ten years imprisonment (*maximum*), and fine. s.450. If in order to the committing of any offence punishable with death,—transportation for life, or *rigorous* imprisonment for ten years (*maximum*), and fine. s.449.

264. *What is the punishment of lurking house-trespass or housebreaking?*

[**Note.**—Lurking house-trespass and housebreaking are, as regards punishment, coupled together in the Code as offences of precisely similar character.]

Apart from special circumstances,—two years imprisonment (*maximum*), and fine (s.453). If committed *by night*,—three years imprisonment (*maximum*), and fine. (s.456.)

If committed in order to the committing of any offence punishable with imprisonment,—three years imprisonment (*maximum*), and fine (s.454), or if *by night*,—five years imprisonment (*maximum*), and fine (s.457). If the offence be *theft*,—ten years imprisonment (*maximum*), and fine (s.454), or if *by night*,—fourteen years imprisonment (*maximum*), and fine (s.457).

[**Note.**—There is no special provision for the case of lurking house-trespass or housebreaking in order to the committing of an offence punishable with death or transportation for life,—but as every act of housebreaking or lurking house-trespass includes "house-trespass," such a case is sufficiently provided for by ss.449, 450. See last Question.]

If the lurking house-trespass or housebreaking be committed after preparation made for causing hurt to, assaulting, or wrongfully restraining any person, or putting any person in fear of hurt, assault, or wrongful restraint, it is punishable with ten years imprisonment (*maximum*), and fine. s.455. If *by night*,—fourteen years imprisonment (*maximum*), and fine. s.458.

(See note on last Question.)

If, while committing lurking house-trespass or housebreaking, the offender causes grievous hurt, or attempts to cause death or grievous hurt to any person,—he is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.459. If *by night*, then *every*

person jointly concerned in the housebreaking or lurking house-trespass is punishable with transportation for life, or ten years imprisonment (*maximum*), and fine. s.460.

[**Note.**—Lurking house-trespass or housebreaking by night or otherwise (ss.443—446) in order to the committing of either of the offences following:—theft, extortion by threat of accusation of an unnatural offence, or receiving of stolen property, is likewise punishable (under Act VI. of 1864) with whipping, as an *alternative* punishment for a first offence, and as an alternative or additional punishment for a second.

If in order to the commission of either of the offences following:—giving or fabricating false evidence; assaulting a woman; rape; unnatural offence; robbery; dacoity or forgery,—the offender is in like manner, on a second conviction, liable to whipping as an additional punishment.]

265. *What is the punishment of dishonestly, or with intent to commit mischief, breaking open or unfastening any closed receptacle containing or supposed to contain property?*

Two years imprisonment (*maximum*), or fine, or both. s.461. Or if the offender have been entrusted with the custody of such receptacle,—three years imprisonment (*maximum*), or fine, or both. s.462.

[**Note.**—If the intent be to commit theft, the offender will likewise be punishable under s.511.]

CHAPTER XVIII.

OF OFFENCES RELATING TO DOCUMENTS AND TO TRADE AND PROPERTY MARKS.

266. *When is a person said to commit 'forgery'?*
When he "makes a false document or part of a document with intent to cause damage or injury to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud, or that fraud may be committed." s.463.

267. *When is a person said to 'make a false document'?*
When he (1) "dishonestly or fraudulently makes, signs, seals, or executes a document or part of a document, or makes any mark denoting the execution of a document, with the intention of causing it to be believed that such document or part of a document was made, signed, sealed, or executed, by or by the authority of a person by whom or by whose authority he knows that it was not made, signed, sealed, or executed, or at a time at which he knows that it was not made, signed, sealed, or executed."

Or (2) "Without lawful authority, dishonestly or fraudulently, by cancellation or otherwise, alters a document in any material part thereof, after it has been made or executed either by himself or by any other person, whether such person be living or dead at the time of such alteration."

Or (3) "dishonestly or fraudulently causes any person to sign, seal, execute, or alter a document, knowing that such person, by reason of unsoundness of mind, or intoxication, cannot, or that by reason of deception practised upon him he does not, know the contents of the document or the nature of the alteration." s.464.

Explanation 1.—"A man's signature of his own name may amount to forgery."

Explanation 2.—"The making of a false document in the name of a fictitious person, intending it to be believed that the document was made by a real person, or in the name of a deceased person, intending it to be believed that the document was made by that person in his lifetime, may amount to forgery." *Ibid.*

Illustrations.—A makes, signs, or seals a pretended conveyance in the name of Z, with intent to cause it to be believed that such conveyance was made, signed, or sealed by Z.

A picks up a cheque, signed by Z, but with the amount left blank. He fills up the blank by inserting Rs. 10,000.

A sells and conveys an estate to Z. A afterwards, in order to defraud Z, executes a conveyance of the same estate to B, dated six months earlier than that to Z, intending it to be believed that he had previously conveyed the estate to Z.

A having a cheque drawn upon B by Z for Rs. 10,000, adds a cypher to the 10,000, thus making it appear to be for Rs. 100,000.

Z's Will contains these words—"I direct that my remaining property be equally divided between A, B, and C. A dishonestly scratches out B's name, thus making it appear that the whole was left to himself and C.

A obtains possession of a promissory note endorsed as payable "to Z or his order." A dishonestly erases the endorsement, converting the special endorsement into a blank endorsement.

Z dictates his Will to A. A intentionally inserts the name of a different legatee in place of a legatee named by Z, and by

representing to Z that he has prepared the Will according to his instructions, induces Z to sign it.

A signs his own name to a bill of exchange, intending that it may be believed that the bill was drawn by another person of the same name.

A, obtaining possession of a blank cheque, fills up and signs it with the name of a fictitious person, intending to pay it away for value as a good cheque.

A has, in either of the cases supposed, committed forgery.

268. *What is the punishment of forgery?*

Apart from special circumstances,—two years imprisonment (*maximum*), or fine, or both. s.465.

If the document forged is intended or known to be likely to harm the reputation of any party,—three years imprisonment (*maximum*), and fine. s.469.

If the document forged is intended to be used for the purpose of cheating (s.468), or purports to be a record or proceeding of or in a Court of Justice, or a Register of Birth, Baptism, Marriage, or Burial, or a register, certificate, or document made by a public servant as such, or an authority to institute or defend or take any proceedings in a suit, or to confess judgment, or a power of attorney (s.466.),—seven years imprisonment (*maximum*), and fine.

If the document forged purports to be a valuable security, or a will, or an authority to adopt a son, or to make or transfer any valuable security, or to receive the principal, interest, or dividends thereon, or to receive or deliver any money, moveable property, or valuable security, or to be an acquittance or receipt acknowledging the payment of money, or the delivery of any moveable property or valuable security, —transportation for life, or ten years imprisonment (*maximum*), and fine. s.467.

[**Note.**—Upon a second conviction under either of ss.463, 466, 467, 468, 469, the offender is punishable (under Act VI. of 1864) with whipping as an additional punishment.]

269. *What is the definition of a 'forged document' ?*

Any "false document made wholly or in part by forgery." s.470.

270. *What is the punishment of fraudulently using as genuine a false document ?*

The same as that of actually forging such document. s.471.

271. *What is the punishment of making or possessing a counterfeit seal, plate, or other instrument for making an impression for the purpose of committing forgery ?*

If the forgery in question would be punishable under s.467,—transportation for life, or seven years imprisonment (*maximum*), and fine. s.472.

If the forgery would be punishable under any other section of this chapter,—seven years imprisonment (*maximum*), and fine. s.473.

272. *What is the punishment of having possession of a document known to be forged with intent to use it as genuine ?*

If such document be of the description mentioned in s.466 (see Quest. 268),—seven years imprisonment (*maximum*), and fine. If of the description mentioned in s.467,—transportation for life, or seven years imprisonment (*maximum*), and fine. s.474.

273. *What is the punishment of counterfeiting a device or mark used for authenticating documents, or possessing (with intent to use) counterfeit marked material ?*

If such document be of the description mentioned in s.467,—transportation for life, or seven years imprisonment (*maximum*), and fine. s.475. If of any other description,—seven years imprisonment (*maximum*), and fine. s.476.

274. *What is the punishment of a person who fraudulently or dishonestly, or with intent to cause damage or injury to the public or any person, does or attempts to, cancel, destroy, deface, or secrete, or commit mischief respecting any document purporting to be a Will, or an authority to adopt a son, or any valuable security?*

Transportation for life, or seven years imprisonment (*maximum*), and fine. s.477.

OF TRADE AND PROPERTY MARKS.

275. *What is a 'trade-mark'?*

Any mark "used for denoting that goods have been made or manufactured by a particular person, or at a particular time or place, or that they are of particular quality." s.478.

276. *What is a 'property-mark'?*

Any mark "used for denoting that moveable property belongs to a particular person." s.479.

277. *When is a person said to use a false trade-mark?*

When he marks any goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle with any mark thereon, with the intention of causing it to be believed that the goods so marked,

or in such receptacle contained, were made or manufactured by any person, or at any time or place, by whom, or at which, they were not made or manufactured, or that they are of a particular quality of which they are not. s.480.

278. *When is a person said to use a false property-mark?*

When he marks any moveable property or goods, or any case, package, or other receptacle containing goods, or uses any case, package, or other receptacle having any mark thereon, with the intention of causing it to be believed that the property or goods so marked, or in such receptacle contained, belong to a person to whom they do not belong. s.481.

279. *What is the punishment of using a false trade or property mark?*

If used "with intent to deceive or injure any person" (otherwise, no offence) one year's imprisonment (*maximum*), or fine, or both. s.482.

Fraudulently making any false mark upon any package or receptacle containing goods, with intent to cause any person to believe that such package or receptacle contains goods which it does not contain, or that it does not contain goods which it does contain, or that the goods therein contained are of a nature or quality different to their real nature or quality,—is punishable with three years imprisonment (*maximum*), or fine, or both. s.487.

Fraudulently *using* such a mark with like intent, is punishable in like manner. s.488.

280. *What is the punishment of knowingly counter-*

feiting any trade or property mark used by any other person?

Two years imprisonment (*maximum*), or fine, or both. s.483.

The intent necessary to the offence in this case is "to cause damage or injury *to the public* or to any person."

—The resemblance to the mark counterfeited need not be exact. See s.28, Quest. 26.]

If the mark counterfeited be a property or quality mark used by a public servant, or a mark denoting that property has passed through a particular office, or is entitled to any exemption,—the offence is punishable with three years imprisonment (*maximum*), and fine. s.484.

Possessing (with intent to use) any public or private property or trade mark (genuine or otherwise) for purposes of counterfeiting or deception, or making or possessing (with intent to use) any die, plate, or other instrument for counterfeiting any such mark, is punishable with three years imprisonment (*maximum*), or fine, or both. s.485.

Knowingly selling goods marked with a counterfeit property or trade mark, "with intent to deceive, injure, or damage any person,"—is punishable with one year's imprisonment and fine. s.486.

281. *What is the punishment of removing, destroying, or defacing a property-mark, with intent to cause injury to any person?*

One year's imprisonment (*maximum*), or fine, or both s.489.

CHAPTER XIX.

OF THE CRIMINAL BREACH OF CONTRACTS OF SERVICE.

282. *To what description of contracts are the provisions of this Chapter intended to apply, and why?*

The provisions of this Chapter are designed to punish such breaches of contract as from their nature cause such injury as none but high damages could compensate, while from the humble position of the offender, high damages would be probably impossible to obtain; as, for example, where coolies, engaged to carry ladies and children, ignorant of the country and language, to a distant place, run away and leave them unprotected in the midst of the jungle. The breaches of contract here provided for are three in number. (1) Breach of contract of service during a voyage or journey. (2) Breach of contract to attend on and supply the wants of helpless persons. (3) Breach of contract to serve at a particular place to which the servant is conveyed at the master's expense.

283. *What constitutes the offence of breach of contract of service during a voyage or journey, and how is it punishable?*

Whoever being bound by a lawful contract to render his

personal service in conveying or conducting any person or property, from one place to another, or to act as servant to any person during a voyage or journey, voluntarily omits so to do, *except in the case of illness or ill-treatment*, shall be punished with one month's imprisonment (*maximum*), or Rs. 100 fine (*maximum*), or both. s.490.

Explanation.—It is not necessary to this offence that the contract should be made with the person for whom the service is to be performed, *i.e.*, that such person should be the actual hirer.

Illustrations.—A, a palanquin bearer, being bound by legal contract to carry Z from one place to another, runs away in the middle of the stage,—or being bound to carry Z's baggage, throws such baggage away. A is in either case within the section; as also though A be only the servant of a Dâk Company employed by Z, and have not himself made any contract with Z.

284. *What constitutes the offence of breach of contract to attend on and supply the wants of helpless persons, and how is it punishable?*

Whoever, being bound by a lawful contract to attend on or to supply the wants of any person who by reason of youth, unsoundness of mind, disease or bodily weakness, is helpless or incapable of providing for his own safety or supplying his own wants, voluntarily omits so to do, shall be punished with three months imprisonment (*maximum*), or Rs. 200 fine, (*maximum*), or both. s.491.

285. *What constitutes the offence of breach of contract to serve at a particular place, and how is it punishable?*

"Whoever, being bound by lawful contract *in writing* to work for another person as an *artificer, workman,* or *labourer,* for a period *not more than three years,* at any place within British India to which by virtue of the con-

tract he has been, or is to be conveyed at the expense of such other, voluntarily deserts the service of that other during the continuance of his contract, or without reasonable cause refuses to perform the service which he has contracted to perform, such service being reasonable and proper service, shall (*unless it shall appear that the employer has ill-treated him or neglected to perform the contract on his part*)" be punished with one month's imprisonment (*maximum*), or with fine not exceeding double the amount of such expense (of conveyance), or both. s.492.

CHAPTER XX.

OF OFFENCES RELATING TO MARRIAGE.

286. *To what punishment is a man liable who by deceit causes a woman to believe that she is lawfully married to him, and in that belief to cohabit or have sexual intercourse with him ?*

Ten years imprisonment (*maximum*), and fine. s.493.

[**Note.**—This section will cover the case either of a mock marriage, or of a marriage which, though regular in form, is by reason of some impediments, known to the man, (*e.g.*, difference of religion) invalid. It would probably also cover the case of a stranger personating the lawful husband, though this is already made punishable as rape. See s.375, Quest. 235.]

287. *What is the provision of the Code in respect of bigamy ?*

"Whoever, having a husband or wife living, marries *in any case in which such marriage is void by reason of its taking place during the life of such husband or wife,* shall be punished with" seven years imprisonment (*maximum*), and fine. s.494.

[**Note.**—Where polygamy is lawful, the non-applicability of the words italicised will bar the operation of the section. To constitute the offence the prosecution must prove. 1. The first marriage. 2. The second marriage. 3. That first wife was alive at date of second marriage. 4. That according to the system under which accused lives, the second marriage is void by reason of the subsistence of the first.]

Exception.—This section does not extend to any person whose first marriage has been declared void by a Court of competent jurisdiction, nor to any person whose first husband or wife has been continuously absent and not heard of by such person for seven years, *provided such person shall, before contracting the subsequent marriage, inform the person with whom such marriage is contracted, of the real state of the facts so far as the same are within his or her knowledge. Ibid.*

If the offender under the last section has concealed from the second husband or wife the fact of the former marriage, he or she may be punished with ten years imprisonment (*maximum*), and fine. s.495.

288. *What is the punishment of a person with fraudulent intent going through the marriage ceremony, knowing that he or she is not thereby lawfully married?*

Seven years imprisonment (*maximum*), and fine. s.496.

[**Note.**—A person may be within this section, if his or her intent be fraudulent, though both parties may be aware of the invalidity of the ceremony.]

289. *How is 'adultery' defined, and how is it punishable?*

"Whoever has sexual intercourse with a person who is *and whom he has reason to believe to be the wife of another man,* without the consent or connivance of that man, such sexual intercourse not amounting to the offence of rape, is guilty of the offence of adultery, and is punishable with five years imprisonment (*maximum*), or fine, or both. *In such case the wife shall not be punishable as an abettor.* s.497.

[**Note.**—By the Code of Criminal Procedure, s.177, no one but the husband of the woman can institute a charge under this section.

It will be observed that under this section one form only of adultery is punishable, viz., the seduction of a married woman. A married man having illicit connection with a single woman is not within the section.

With respect to the non-punishment of the female offenders, the Indian Law Commissioners say "They are married while still children. They are often neglected for other wives while still young. They share the attention of a husband with several rivals. To make laws for punishing the inconstancy of the wife, while the law admits the privilege of the husband to fill his zenana with women, is a course which we are most reluctant to adopt."]

290. *What is the punishment of taking, enticing away or concealing any woman known or believed to be married, with intent that she may have illicit intercourse with any person?*

Two years imprisonment, or fine, or both. s.498.

[**Note.**—The consent or non-consent of the woman is immaterial to the offence. If deceit be employed, the enticement may amount to abduction, and will in that case be punishable (s.366, Quest. 231) with ten years imprisonment (*maximum*), and fine.

By the Code of Criminal Procedure, s.178, no one but the husband of the woman, or the person having care of such woman on behalf of her husband, can institute a charge under this section.]

CHAPTER XXI.

OF DEFAMATION.

291. *When is a person said to 'defame' another?*

"Whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person, intending to harm, or having reason to believe that such imputation will harm the reputation of such person, is said (except in the cases hereinafter excepted) to defame such person." s.499.

Explanation 1.—It may amount to defamation to impute anything to a deceased person, if the imputation would harm his reputation if living, and is intended to be hurtful to the feelings of his relatives.

Explanation 2.—It may amount to defamation to make an imputation concerning a company or an association of persons as such.

Explanation 3.—An imputation in the form of an alternative, or expressed ironically, may amount to defamation.

Explanation 4.—No imputation is said to harm a person's reputation unless it directly or indirectly, in the estimation of others, lowers the moral or intellectual character of that person, or his character in respect of his caste or calling, or lowers his credit, or causes it to be believed that his body is in a loathsome state or in a state generally considered as disgraceful. *Ibid.*

Illustrations.—A says ironically, "Z is an honest man, he never stole B's watch," intending it to be believed that Z did steal the watch.

A is asked who stole B's watch. A points to Z, intending it to be believed that Z stole the watch.

A draws a picture of Z running away with B's watch, intending it to be believed that Z stole such watch.

A has in either of the cases stated (unless the case falls within one of the special exceptions) committed defamation.

292. *What are the excepted cases above referred to ?*

Exception 1.—It is not defamation to impute anything which is true, if it be for the public good that such imputation should be made or published. Whether or not it is for the public good is a question of *fact.*

Exception 2.—It is not defamation to express in good faith any opinion respecting the conduct of a public servant in the discharge of his public functions, or respecting his character, *so far as his character appears in that conduct.*

Exception 3.—It is not defamation to express in good faith any opinion respecting the conduct of any person touching any public question, and respecting his character, *so far as his character appears in that conduct.*

Exception 4.—It is not defamation to publish a substantially true report of the proceedings of a Court of Justice (or any inquiry in open Court preliminary to a trial in a Court of Justice) or of the result of such proceedings.

Exception 5.—It is not defamation to express in good faith any opinion respecting the merits of any case, civil or criminal, which has been decided by a Court of Justice, or respecting the conduct of any person as a party, witness, or agent in any such case, or respecting the character of such person, *so far as his character appears in that conduct.*

Illustration.—A says "I think Z's evidence on that trial is so contradictory, that he must be stupid or dishonest." This is within the exception, the opinion expressed being solely as to Z's character as it appears in his conduct as a witness. But if A says—"I do not believe what Z asserted at that trial, because I know him to be a man without veracity:"—here the opinion expressed, not being founded on Z's conduct as a witness, is not within the exception.

Exception 6.—It is not defamation to express in good faith any opinion respecting the merits of any performance which its author has (either expressly or by implication) submitted to the judgment of the public, or respecting the character of the author, *so far as his character appears in such performance.*

Illustration.—A person who publishes a book, makes a speech in public, or appears in a public performance, invites the judgment of the public.

Exception 7.—It is not defamation in a person having over another any authority, either conferred by law, or arising out of a lawful contract made with that other, to pass in good faith any censure on the conduct of that other in matters to which such lawful authority relates.

Illustration.—A judge censuring in good faith the conduct of a witness, or of an officer of the Court,—a head of a department censuring in good faith those who are under his orders,—a schoolmaster censuring his pupil,—a master his servant,—a banker his cashier, are within the exception.

Exception 8.—It is not defamation to prefer in good faith an accusation against any person to any of those who have lawful authority over that person, with respect to the subject matter of accusation.

Illustration.—In good faith accusing a supposed offender before a magistrate,—complaining of a servant to his master,—or of a child to his father, are within the exception.

Exception 9.—It is not defamation to make an imputation on the character of another, provided that the imputation be made in good faith for the protection of the interests of the person making it, or of any other person, or for the public good.

Illustration.—A, a shopkeeper, for the protection of his own interests, says to B, his shopman, "Sell nothing to Z unless he pays you ready money, for I have no opinion of his honesty." A is within the exception.

Exception 10.—It is not defamation to convey a caution, in good faith, to one person against another, provided that such caution be intended for the good of the person to

whom it is conveyed, or of some person in whom that person is interested, or for the public good.

293. *What is the punishment of defamation?*

Simple imprisonment for two years (*maximum*), or fine, or both. s.500.

Knowingly printing or engraving matter known to be defamatory (s.501), or knowingly offering for sale any printed or engraved substance containing defamatory matter (s.502), is punishable in like manner.

CHAPTER XXII.

OF CRIMINAL INTIMIDATION, INSULT, AND ANNOYANCE.

294. *When is a person said to commit 'criminal intimidation'?*

When he threatens another with any injury to his person, reputation, or property, or to the person or reputation of any one living (or the reputation of any one deceased) in whom that person is interested, with intent to cause alarm to that person, or to cause that person to do any act which he is not legally bound to do, or to omit any act which he is legally entitled to do. s.503.

[**Note.**—Where the purpose of the threat is to induce the person threatened to deliver any property or valuable security, the offence is already made punishable under the sections relative to extortion, and attempts to commit extortion, ss.383—389 (Questions 240, 241). The above section (s.503) would therefore appear to be designed to meet cases in which the special motive of extortion (*i.e.*, inducing delivery of property) is absent. It will be observed that the mere intention to cause alarm is sufficient to bring an offender within this section.]

295. *What is the punishment of criminal intimidation?*

Apart from special circumstances,—two years imprisonment (*maximum*), or fine, or both. Or if the threat be—

1. To cause death or grievous hurt; or
2. To cause destruction of any property by fire; or

3. To cause an offence punishable with death, transportation, or seven years imprisonment; or

4. To impute unchastity to a woman,—

Seven years imprisonment (*maximum*), or fine, or both. s.506.

If criminal intimidation be committed by an anonymous communication, or be accompanied with any precaution to conceal the name or abode of the person from whom the threat comes, the offender is liable to an *additional* punishment of two years imprisonment (*maximum*). s.507.

296. *Is any form of intimidation short of 'criminal intimidation,' as above defined, punishable by the Code?*

Voluntarily causing or attempting to cause any person to do anything which he is not legally bound, or to omit anything which he is legally entitled to do, *by inducing or attempting to induce him to believe that he or any person in whom he is interested will (in default of so doing or omitting) become, or will be rendered by some act of the offender, an object of divine displeasure,*—is punishable with one year's imprisonment (*maximum*), or fine, or both. s.508.

Illustration.—A, in order to induce Z to give him alms, sits *dhurna* at Z's door (abstaining from food), the belief of the Hindoos being that if A die under such circumstances, Z will become an object of divine displeasure, as morally accountable for A's death. A is within the section.

297. *What is the punishment of an insult intended to provoke a breach of the peace, or to cause the commission of any other offence?*

Two years imprisonment (*maximum*), or fine or both. s.504.

298. *What is the punishment of knowingly circulating or publishing any false statement or report, with intent to cause mutiny or any offence against the State, or against the public tranquillity?*

Two years imprisonment (*maximum*), or fine, or both. s.505.

299. *What is the punishment of any word or act intended to insult the modesty of a woman?*

Simple imprisonment for one year (*maximum*), or fine, or both. s.509.

The section further includes any intrusion upon the privacy of a woman with like intent.

300. *Under what circumstances is* intoxication *an offence under the Code, and how is it punishable?*

Whoever, in a state of intoxication, appears *in any public place* or *in any place which it is a trespass in him to enter,* and there conducts himself in such a manner as to *cause annoyance to any person,* is punishable with simple imprisonment for twenty-four hours (*maximum*), or Rs. 10 fine (*maximum*), or both. s.570.

[**Note.**—Intoxication alone is not made punishable by the Code. To bring an intoxicated person within the section, he must cause annoyance to some person, and he must do so in such a place as specified. Annoyance caused by an intoxicated person, *on his own premises*, to another, is not punishable under this section.

As to meaning of the words "public place," see note on s.159, Quest. 114.]

CHAPTER XXIII.

OF ATTEMPTS TO COMMIT OFFENCES.

301. *Under what circumstances, and how, is an* attempt to commit an offence *punishable?*

With regard to many offences, the attempt to commit the offence has been expressly provided for. In the absence of such express provision,—Whoever attempts to commit or cause to be committed any offence *punishable with transportation or imprisonment,* and in such attempt *does any act towards the commission of the offence,* shall be punished with transportation or imprisonment of any description provided for the offence, for *one half* (*maximum*) of the longest term provided for the offence, or with *such fine* as is provided for the offence, or both. s.511.

[**Note.**—The test of the attempt will be, "Has the accused *done any act* towards the commission of the offence?" See s.307, Quest. 202, and the Illustrations thereto.]

Illustrations.—A makes an attempt to steal some jewels by breaking open a box, but finds that there are no jewels in it. He has done an act towards the commission of theft, and is therefore within the section.

In like manner, if A makes an attempt to pick Z's pocket by thrusting his hand therein. The pocket proves to be empty, but A is still within the section.

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